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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

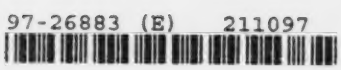
Letter dated 7 October 1997 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

On instructions from the Minister for Foreign Affairs of the Union of Myanmar, I have the honour to transmit herewith the statement made by His Excellency U Ohn Gyaw, Minister for Foreign Affairs of Myanmar, at the Asia Society in New York on 30 September 1997 concerning Myanmar (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly at its fifty-second session, under agenda item 112 (c) entitled "Human rights situations and reports of special rapporteurs and representatives".

(Signed) Win MRA
Ambassador
Permanent Representative

97-26883 (E) 211097



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ANNEX

Impact of Myanmar's membership into ASEAN

It is an honour for me, and for Myanmar, to be invited to present my views on the impact of Myanmar's membership into the Association of South-East Asian Nations (ASEAN). The Asia Society has the noble aim of promoting the spirit of goodwill and understanding through contacts such as today's talk. I have every confidence that my views presented to you today will serve to promote a better understanding of Myanmar as we embark on a new era of friendship and cooperation with our fellow members of ASEAN.

Let me first outline the main components of my presentation. I will begin with a broad historical overview of Myanmar and her interactions with ASEAN. I will then discuss the impact of ASEAN membership on Myanmar, focusing on the constructive aspects of this impact. In my conclusion, I will summarize the important factors, which in my view, have contributed to the constructive and positive relations over the years between Myanmar and the ASEAN States, and which today will form the basis of our inter-linked futures under the ASEAN aegis.

Historical perspective

Myanmar endeavours to maintain friendly relations with all nations in the international community, and places special emphasis on her ties with neighbouring countries in the South-East Asia region. We have consistently identified ourselves as being a part of South-East Asia, and this inherent perception has led to the progressive strengthening and enhancement of the traditional close and friendly relations with the South-East Asian nations, with whom we share many affinities in our history, culture, religion, and social framework.

When the Association of South-East Asian Nations was first established on 8 August 1967 in Bangkok by the five original member States, the policies and priorities pursued by the then Government of Myanmar (then known as Burma) did not include membership in the Association. Burma was compelled to decline the offer of membership in 1967. Nevertheless, the traditional ties of friendship and cooperation continued, strengthened by the five Principles of Peaceful Co-existence which have formed the basis of our foreign policy over successive administrations.

With the advent of the State Law and Order Restoration Council in September 1988, fundamental changes were introduced in the political, economic, administrative, social and international outlook, direction and policies. These transformations made it possible for the country to depart from an isolationist one-party socialist State to a democracy-oriented multiparty State. The centrally controlled socialist economy was replaced with a market-oriented economy. Adopting new political, economic and social policies created conditions favourable for closer cooperation with each ASEAN State, as well as with the Association itself.

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In the years of the cold war, Myanmar had stayed somewhat aloof for 26 years under the socialist regime. The sweeping changes in international conditions and trends, as well as in our own domestic priorities and directions, opened new opportunities for Myanmar to assume greater responsibilities and contribute towards regional peace, stability and prosperity. At the same time the growing trend of interdependence among nations stressed the need for regional cooperation for the common peace and prosperity of the region as well as for each individual nation in the region.

Against this backdrop, Myanmar began to implement the first steps towards integration into the ASEAN fold. I was invited as a guest of the host Government to the twenty-seventh and twenty-eighth ASEAN Ministerial Meetings, in 1994 and 1995. It was at the twenty-eighth ASEAN Ministerial Meeting where we applied for observer status in ASEAN. This was accorded to us at the twenty-ninth ASEAN Ministerial Meeting. At the head-of-government level also, we participated in the fifth ASEAN Summit, held in Bangkok in December 1995, and at the Informal Summit held in Jakarta the following year. It was at the fifth ASEAN Summit that Senior General Than Shwe first voiced Myanmar's aspiration for membership: "It is hoped that a genuinely harmonious, peaceful and prosperous South-East Asia-10 under one roof will come into existence in the not too distant future ... If there is to be a genuine cohesion, there cannot be two South-East Asias ... Myanmar is confident that if we all work together in unity, the essentials are already there for our region to play a significant role in the world at large. Myanmar looks forward to contributing towards regional development".

It is in this spirit that Myanmar applied for membership and actively implemented preparations for membership into ASEAN. It is in this spirit that we were admitted into the ASEAN fold in July this year during the thirtieth ASEAN Ministerial Meeting, held in Malaysia.

Impact of Myanmar's membership

Myanmar's participation in ASEAN, in my view, can only be that of a constructive, positive nature. ASEAN's constructive engagement has proved an invaluable assistance in our efforts for integration. The continuation of constructive consultations with our ASEAN colleagues will facilitate our process of political, economic and social reforms, and help us catch up with the fast pace of growth and development that is now so characteristic of ASEAN. In political and security cooperation, in economic cooperation, in functional cooperation, the positive impact of membership is evident.

Political and security cooperation

ASEAN's meeting place for cooperation in political and security matters of the region is the ARF - the ASEAN Regional Forum. The ARF first came into being at the twenty-seventh ASEAN Ministerial Meeting, and was welcomed by all as a positive initiative for regional peace and security.

Myanmar first participated in the third ASEAN Regional Forum as an observer at the twenty-ninth ASEAN Ministerial Meeting, in Indonesia, and we participated

as a full member of ASEAN in the fourth ASEAN Regional Forum, held this year in Malaysia.

Our participation in the ARF has afforded us the chance to develop proximity, and understanding on the region's security-related issues, as well as to clear any doubt or misperception regarding situations and circumstances in any of the participating countries. The frank and open discussions in the ARF circle are very constructive, in that first-hand information is exchanged at the highest level of diplomats representing their respective Governments. The informality and cooperative spirit of these discussions have assisted and contributed considerably to the promotion of greater transparency and have also facilitated the initiation of confidence-building among the participants. This is very significant since confidence-building is the first step towards establishing mechanisms of peaceful conflict resolution. The wide range an strategic mix of the ARF participants require that understanding and transparency be promoted as much as possible.

Since the beginning of 1997, Myanmar has participated in the implementation of a number of ARF activities such as confidence-building measures, search and rescue, peacekeeping and preventive diplomacy.

The impact of our participation and immersion in this sphere is translated into the sharing of information with fellow ARF participants and gaining invaluable experience on how to pursue more effectively the process of political change in the national context against the strategic backdrop of the region and beyond.

Economic cooperation

Economic cooperation in ASEAN also builds on the notion of interdependence. In the new and fluid situation of the post-cold-war years, cohesion and interdependence have become more important than ever in every sphere.

The focus of economic cooperation in ASEAN can be rightly identified as the ASEAN Free Trade Area, or AFTA, process. Interdependence in the fields of trade, investment and finance has been enhanced by the signing of the AFTA Agreement in 1992, and the mechanism for realizing AFTA, the Common Effective Preferential Tariff (CEPT) Scheme, was launched in January 1993. New members who have joined since the initiation of the AFTA process are now adapting fast to the tariff reduction process and harmonization in other trade facilitation measures.

Other areas of economic cooperation include cooperation in industrial development, finance and banking, investment matters, food, agriculture and forestry, minerals, energy, transport and communications, tourism, services and intellectual property.

The impact of enhanced cooperation with our ASEAN friends in all these areas will be translated into an increased momentum of development in Myanmar's transitional economic scene. Exchange of information and national experiences, collaborative efforts and transfer of practices, harmonization of national practices, coordination and review of policies, and encouraging the active

participation and cooperation of the private sector ensures the systematic evolution of our economy. Opening up through ASEAN brings the benefit of new opportunities for Myanmar in the economic field, as the economic synergy between ASEAN countries has a definite experience impact on each country as well as on the Association.

Functional cooperation

Functional cooperation is where Myanmar will see the most impact in the sphere of our social development efforts. This is one of the areas where we can effectively promote a better understanding of each other in the region. Since sociocultural understanding plays an important role in sustaining and accelerating substantive cooperation between ASEAN member States. Myanmar looks forward to the sharing of experiences and collective efforts in all endeavours in this field.

Functional cooperation covers the areas of science and technology, environment, culture and information, social development, drug and narcotics control, and civil service. Through cooperation and interaction in these areas, knowledge about one another's society, history and culture will certainly assist a deeper understanding of each other's situations.

At this point, I wish to digress a bit on our efforts for drug and narcotics control and for social development.

Myanmar has been singled out for punitive action by certain countries, and among the reasons given by them for doing so, inaction in drug eradication efforts and lack of human rights recognition are the most repeated.

Myanmar is committed to combating drugs and has consistently implemented drug eradication measures as a national responsibility. We have acceded to and comply with the various international conventions and plans of action adopted by the international community. We are also cooperating with our neighbouring countries and with the United Nations International Drug Control Programme (UNDCP) as part of the subregional and regional strategies formulated for this purpose. We have signed agreements for cooperation in narcotic suppression with China, Thailand, India, Bangladesh and the Lao People's Democratic Republic - in other words, with all of our five immediate neighbours. A similar agreement was also signed with Viet Nam in 1995. The role and mandate of UNDCP is recognized, as evidenced in our subregional-level agreements signed with China and UNDCP, Thailand and UNDCP, as well as the Memorandum of Understanding (MOU) signed between Myanmar, the Lao People's Democratic Republic, China, Thailand and UNDCP in 1993. Our national legislations have provisions for the control of money laundering in connection with the drug trade. Our transparency in this area is obvious, yet allegations are still being made.

We look forward to enhanced cooperation not only with our immediate neighbours but also with other South-East Asian neighbours under the ASEAN umbrella in ASEAN's collective effort against drugs. We have participated in the meetings of ASEAN Senior Officials for Drugs in both observer and member capacities. Our participation and contribution towards drug and narcotics control will surely serve as an illustration of our commitment and sincerity in

this area. Through our cooperation with fellow ASEAN members, we have every confidence that this serious problem will be minimized at the national and regional levels.

Related to this is the aspect of social development. We in Myanmar are pursuing drug and narcotics control through poverty alleviation in the border areas. Bringing about the socio-economic progress of these areas ensures that the residents will not turn to poppy cultivation as a means of livelihood, as their standard of living is raised, with more awareness and income. In a sense, this can be interpreted as part of our human rights effort, and also as an integral part of bringing about social development. This is another aspect of functional cooperation.

One may ask: How is this connected with human rights? The right to development is the inherent right for all of us. With economic development, the right to social well-being becomes a priority as well. For promoting social well-being, certain values peculiar to a society have to be considered, since these values will provide the framework within which social well-being will develop. The four social objectives for the Myanmar people are being implemented in tandem with our economic priorities. Thus, both economic and social rights - so very important for developing societies - are being ensured. As we mature politically and move nearer to our goal of a modern developed nation, the more sophisticated aspect of human rights will follow naturally.

Functional cooperation thus provides the ideal means of achieving social development through our interactions with our friends and neighbours in the areas mentioned earlier. This is where the impact of our membership will be most evident, as further interactions, particularly people-to-people contacts, bring us the opportunity to become more familiar with one another, have more first-hand knowledge of each other's society, history and culture, and have more experience in, as well as cultivate, the habit of interacting with one another.

The success factors

The achievement of ASEAN, and the integration of Myanmar, in my view are due mainly to the intertwined contribution of domestic and regional factors.

At the domestic level, the South-East Asian spirit of determination is evident in each leadership in the region. Although this notion of strong leadership is seen essentially as characteristic of the "East", it is a reality in South-East Asia where we all share similar histories of emergence into nationhood; similar experiences in grouping together traditions and cultures that go back a long time in history and that cut across the newly defined post-Second World War borders; and similar commitment to the cause of development.

At the regional level, the unique role of ASEAN is evident as the single uniting thread that links together countries with different levels of social cohesion, stability and development. ASEAN has most successfully created a sense of community and the habit of regional cooperation among countries in South-East Asia. The principle of consensus and consultation, and the efforts to mute differences, has reinforced this sense of community. At the same time, because ASEAN is ever pragmatic, the recognition that each individual country

would have to be strong and resilient to be able to contribute to the strength of the region has provided the constructive spirit of cooperation and mutual confidence among the countries in our region.

The impact of Myanmar's membership into ASEAN, then, is seen as the result of these interlocking factors, and a systematic evolution of our development process. It is the element of continuity in the implementation of change in Myanmar - change in the political, economic and social spheres - against the backdrop of the new opportunities and challenges of an imminent new millennium. With the knowledge and experience we gain from and share with our ASEAN colleagues, we will be creating closer proximity through the deeper understanding resulting from our interactions. In the ARF circle too, the same spirit of frank and open discussions in exchanging views and positions of our respective Governments will definitely assist and influence to some extent the continuity or change in the policies pursued towards one another.

It is in this spirit that we look forward to continuing our relations with the United States. Myanmar has enjoyed the warmth of traditional friendly relations with the United States since the time of our independence struggles. We have gained invaluable knowledge and advice from United States national experiences in many areas. The United States has been an understanding friend in our nation-building efforts since the socialist era, and has rendered us invaluable assistance in various fields of cooperation. I see it as most unfortunate that at present the relations between our two countries have fallen victim to the influence and manipulation of certain prejudiced opinions which have created a curtain of misperception in what were formerly ties of understanding and cooperation.

In this era of interdependence and cooperation all across the globe, I do not see any difficulty in lifting this curtain. To the people of the United States, and to people interested in Myanmar, I wish to stress the fact that we do not represent a problem or a burden to continuing relations between nations; instead, what we represent is an opportunity. An opportunity to create mutual benefits at all levels - government, business, people-to-people contacts, new awareness through the media - for a win-win situation. On our part, we are transparent in all our efforts at the domestic, regional and international levels. I have stated at various forums that we stand ready to cooperate and contribute our sincere effort in any endeavour that aims to promote peace, progress and stability to our region, and to the world. I reiterate this aspiration once again today at this meeting.

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PROMOTION AND PROTECTION OF THE RIGHTS OF CHILDREN

Letter dated 10 October 1997 from the Chargé d'affaires a.i. of Cuba to the United Nations addressed to the Secretary-General

I have the honour to transmit to you the views of the Government of the Republic of Cuba concerning the observations of the Committee on the Rights of the Child on Cuba's initial report to that treaty body.

I should be grateful if you would have this letter and its annex circulated as an official document of the fifty-second session of the General Assembly under agenda item 58 entitled "Promotion and protection of the rights of children".

(Signed) Pedro NUÑEZ-MOSQUERA
Ambassador
Deputy Permanent Representative

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ANNEX

Views of the Government of the Republic of Cuba concerning document CRC/C/15/Add.72 containing the observations of the Committee on the Rights of the Child on Cuba's initial report

The Government of the Republic of Cuba deems it appropriate to state its views on the conclusions and recommendations of the Committee on the Rights of the Child concerning Cuba's initial report and requests that these views should be included in full in the report to be submitted by the Committee to the General Assembly.

Cuba took part in the discussion of its first national report knowing that however detailed and complete a report may be, it does not always succeed in describing the true situation of the rights of the child in a given country, because in the end the life and the particular experiences of each country cannot be reflected in their full dimensions in a few pages of text or in statistical tables. At the same time, Cuba hoped to receive more specific guidance and useful recommendations concerning its targets and challenges from individuals whose personal experience is enhanced by a full grasp of the Convention and the topics with which it deals.

It was with amazement and surprise that the Cuban authorities received the Committee's conclusions and recommendations in view of the content of the report which it had submitted as a State party to the Convention, which was amply supplemented by the written replies to the 48 questions put by the Committee on the issues needing to be considered in connection with the report and by the presentation given by the Cuban delegation which attended the Committee's fifteenth session.

The Cuban Government considers the Committee's approach, suggestions and recommendations to lack all balance. On more than one occasion the Committee seems to exceed its mandate, which is nothing more than the mandate of the Convention on the Rights of the Child itself, and to state views and make recommendations about situations and texts which fall outside its competence. Perhaps the most important example of this is provided by the question of the follow-up of the recommendations of the Stockholm World Congress against the Commercial Sexual Exploitation of Children, which, as everyone is aware, are only declaratory, quite apart from being the result of a meeting convened outside the United Nations system.

The Committee's observations show an inexplicable quantitative and qualitative imbalance between the positive (5) and the negative (16) aspects. Several of the observations distort the facts and have no true foundation in Cuba's report, in the additional information provided or in the Cuban reality. Furthermore, the Committee offers no evidence to support its assertions, which exist only because the Committee makes them.

In much of the statement of its concerns the Committee displays an intention of calling into question Cuba's institutional and legal system,

forgetting that in accordance with the principles of the Charter of the United Nations and of international law it is for the Cuban people alone to take sovereign decisions on its institutional and legal arrangements, a right which it has been exercising daily for almost 40 years.

The Committee acknowledges, to be sure, some progress in the social sector, but it appears to be more concerned about civil and political rights and freedoms, with respect to which, without foundation, it discovers further difficulties and makes more insistent recommendations, instead of applying the concept of the universality, interconnectedness, interdependence and interrelationship of all human rights in accordance with the 1993 Vienna Declaration and Programme of Action. The Committee, so preoccupied at times with the holistic approach of the Convention, seems to have disregarded that premise of its work when evaluating Cuba's report.

From a detailed point-by-point analysis of the Committee's views the Government of Cuba finds it essential to emphasize the following points.

Positive aspects

Paragraphs 3 to 7

The positive aspects leave out of account the major progress made by Cuba and the remarkable nature of such progress in view of the great difficulties confronting the nation.

Since the Committee omits the point, it must be emphasized that, as the United Nations Children's Fund (UNICEF) has acknowledged, in many areas Cuba has reached or exceeded the targets proposed for 2000 by the World Summit for Children.

The Committee's view is also in contradiction with the fact that Cuba's situation and its main social indicators place it in the vanguard of the developing countries, at levels comparable with those of the developed countries.

The aspects confirmed by statistics but omitted by the Committee include the reduction and low incidence of the main diseases that cause infant mortality, the high rates of access to drinking water and sanitation, the non-discriminatory nature and equality of opportunity in universal and free access to the highest standards of education, health and other services, the high rate of school attendance, and the non-existence of child labour.

Factors and difficulties impeding the implementation of the Convention

Paragraph 8

The obstacles and difficulties were inexplicably reduced to only two, while other obvious factors were disregarded.

In an apparent desire not to involve itself in political issues, the Committee did not mention the Government of the United States of America as

being mainly responsible for what the Committee euphemistically calls an "embargo", reducing it to the trade aspect alone without taking into account the fact that the most universal and democratic forum of the United Nations, the General Assembly, has adopted by overwhelming majorities for the last five years several resolutions which explicitly define the "embargo" as an economic, trade and financial blockade imposed by the United States of America against Cuba.

Furthermore, the brief reference to the blockade plays down its serious implications for the realization of the human rights of the Cuban people, in particular the rights of the child, as outlined in the report.

Among other consequences, the blockade means additional expenditure for Cuba and a cut in the resources available for use to secure a greater improvement in the rights of the child and increase the supply of goods and services. It also constitutes an attack on the rights to life and health, for it impedes access to medicines and medical technology and equipment, which are sometimes available only in the North American market since the United States, which has a global share of 50 per cent of the new medicines market, leads the world in the development of new medicinal drugs and medical equipment and in the marketing of these products.

Principle subjects of concern, suggestions and recommendations

Paragraph 9

The Committee cannot possess and does not produce any evidence to support its assertion that insufficient steps have been taken to study and review the compatibility of Cuba's legislation with the provisions of the Convention or to justify the corresponding recommendation in paragraph 26; the assertion and recommendation are therefore unacceptable. Cuba's report and the written replies to the Committee's questions provided before the discussion of the report demonstrate quite the reverse.

Paragraph 10

The view that insufficient steps have been taken to reflect adequately in the report of the State party all the rights provided for in the Convention is unwarranted. In any event, it should have been acknowledged that the constitutional, legal and practical policy safeguards protecting children in Cuba predate the Convention itself and go further in their application than its provisions.

Paragraphs 11 and 28

The statement concerning the adoption of a sectoral approach by the mechanisms monitoring the implementation of the Convention and their ineffectiveness in reflecting the holistic approach is an unjust comment. Children receive special and priority attention in Cuba, thanks to the political will of the State, which renders feasible an integrated, systematic and multi-agency approach. Moreover, as stated in paragraph 37 of the report, Cuba has a National Action Programme for Children, which was evaluated in 1992, 1993 and 1994.

The existing mechanisms have demonstrated their effectiveness and are well suited to economic, political and social structures and conditions, while issues relating to children have sufficient political visibility, thanks to the involvement of the entire population through the exercise of participatory democracy.

Paragraph 12

As to the alleged lack of an independent mechanism, such as an Ombudsperson, to deal with complaints of the violation of children's rights, it should be emphasized that the protection of children in Cuba is a priority concern of society as a whole and of the State, which manifests that concern through the design and implementation of a system of policies aimed at promoting the maximum well-being, development and protection of children. This tutelary system for children is made up of subsystems, namely the systems of education, health and social welfare, law enforcement, legal and police action, administration of justice and participatory democracy, which include community-based machinery accessible to children through which violations of their rights are detected and processed with a view to the provision of remedies.

The efforts of socialization agents and the authorities in the macro-environment, the micro-environment and at the individual level enable educators, beginning at the preschool level, family physicians attending to social cases, social workers in State entities and non-governmental organizations, officials concerned with minors such as the police specialized in their protection, the family itself, other agents of the community and the José Martí Pioneers Organization (a non-governmental organization which children join voluntarily and which assists in their education and protection), as well as the Public Prosecutor's Office in its work of processing complaints and claims, to serve as channels for the petitions of boys and girls and also identify causes for complaint when children have not wanted or have not been able to submit information on violations of their rights.

Paragraphs 13 and 30

It is true that statistics in Cuba are collected only for children up to the age of 15. The reason lies in the national legal order. The Government of Cuba would draw the Committee's attention to article 1 of the Convention, which defines the child as every human being below the age of 18 years unless, under the law applicable to the child (and this is the case in Cuba for certain acts), majority is attained earlier.

Paragraphs 14 and 31

The measures adopted and being fully implemented to promote knowledge of the Convention and its implementation are:

(a) The inclusion in general education curricula of study of the Constitution and the major provisions of national legislation, in which the principles and provisions of the Convention are fully reflected;

(b) Analysis of the text of the Convention and conduct of practical activities during teacher training;

(c) The publication of the Cuban edition, which contains an explanation of how the Convention is applied in Cuba, will disseminate knowledge of the Convention more rapidly and more extensively;

(d) The "For Life" programme plans broad dissemination among other sectors, during the remainder of 1997, including other theoretical and practical material;

(e) All the heads of the mother and child care programme in the provinces have copies of the Convention, which have been distributed in municipalities and health units;

(f) In 1996, three territorial meetings were held at the regional level (western, central and eastern) dealing in depth with the Convention;

(g) A national event was held during the past year, organized by the National Psychiatry Group, in which child psychiatrists, psychologists, paediatricians, family physicians and nurses took part; it devoted one session to the Convention.

Paragraphs 15, 32 and 38

As regards the minimum age for sexual consent and harmonization between the age for the completion of schooling and the minimum age for employment, it should be noted that Cuban legislation employs, as does the legislation of a number of other countries, various age parameters for the discharge of functions, duties or responsibilities of a civil, penal, and administrative nature which are determined, not solely by chronological age, but also by the average socio-political-somatic age imparted by the development of the country and the educational level and socio-psychological characteristics of the population.

It will be recalled that the Government of Cuba, when it ratified the Convention, made a single declaration, relating to article 1, since the majority age in Cuba is not 18 years for all civil acts under current national legislation.

The review of the Labour Code is now in progress, and consideration is being given to a number of changes in the chapter on work by children in order to harmonize it with the ILO Convention concerning Minimum Age for Admission to Employment (No. 138). The Labour, Protection and Hygiene Act and its regulations (Act No. 13, 1977), are also to be submitted for review and possible modification; the chapters on the work of children will be altered to reflect the current situation in Cuba and some of the findings of the ILO Committee of Experts on the Application of Conventions and Recommendations.

Although, in practice, compulsory education in the national system of education consists of primary education and basic middle education (basic secondary), its compulsory nature has not been established expressly by law,

since the Act promulgated in 1959 (No. 680/59) provided for compulsory education up to 12 years of age and the sixth grade of primary schooling, and its provisions have not been modified since. This omission may give rise to doubts regarding the actual existence of compulsory education, which is established in practice but not by law.

In accordance with the Convention, a minimum age for marriage has been set in Cuba. It is 18 years, as provided for in the Family Code, which establishes a number of exceptions. The proposals for new family code formulated in the wake of a number of studies, include: maintaining the age of 18 years for regularizing marriage in the case of persons of both sexes; and raising the age from 14 to 16 years in the case of females and maintaining the current age in the case of males when the law authorizes the regularization of a marriage on an exceptional basis.

Paragraphs 16 and 33

The views of the Committee that insufficient measures have been taken to ensure implementation of the general principles of the Convention such as the best interests of the child and respect for the views of the child, are unfounded and unfair.

The report shows that the slogan "there is nothing more important than a child" has been the basic premise of policy and daily practice for the Government of Cuba and non-governmental organizations since 1959, as confirmed by the Constitution and the large body of national legislation such as the Family Code and the Childhood and Youth Code. That slogan could be considered a precursor of the principle contained in the Convention, of acting in "the best interests of the child", which is always a factor in the design and implementation of national policies and actions concerning children.

Cuba's constitution and laws have for many years prohibited and punished discrimination based on race, sex, religion, political opinion or any other pretext and full equality is guaranteed. The Criminal Code provides for the crime of violating the right to equality, in order to punish those who commit acts of discrimination.

Part IV of the report presented by Cuba, referring to civil rights and freedoms, beginning in paragraph 41, explains how children are able to make their views known and how respect for their views is ensured. The Criminal Code also imposes penalties on anyone who in any form hinders another's free and full enjoyment of those freedoms guaranteed by the Constitution and by the law.

The Cuban school is a space where boys and girls may act out their social and political roles, which has a far-reaching effect given the fact that education is universal. Their views are also listened to in activities outside school and in the community, an idea which has put its stamp on the congresses of the José Martí Pioneers Organization. In a practice which is rather rare in the world, these congresses, in plenary session with the Government and the President, analyse their concerns, needs and views and have thus helped perfect the educational system as well as programmes for children.

One of the principle measures taken by the Government of Cuba to guarantee these precepts is to the large-scale promotion of high levels of school attendance; for this reason, in many families adolescents and young people have higher levels of education than their parents, thereby providing one more basic reason for respecting the views of the child.

Studies on the family undertaken in Cuba have shown greater flexibility and democracy in family relations, an increase in the flow and exchange of ideas, in freedom of opinion, and in collective decision-making, amongst other changes. In addition, their results indicate that there is greater tolerance and use of persuasion in the educational methods used within families.

Paragraphs 17 and 34

The Government of Cuba does not share the view of the Committee concerning the insufficiency of information concerning the civil rights and freedoms of children, because its report, especially part IV, provided sufficient information on all the rights which children in Cuba enjoy in full.

It should also be pointed out that children are present at meetings to nominate candidates for community elections; they are put in charge of ballot boxes; they express their views freely in school and in other educational, cultural and sports centres, in order to help them run more smoothly; they can express grievances and make demands; they can lodge formal complaints when they are victims of sexual abuse or when they have been denied their rights; from the age of 10 they may in specific instances legally act in their own behalf to meet the normal needs of daily life, for example in exercising control over any allowance they may receive and over their remuneration once they reach working age, in accordance with the provisions of article 30 of the Civil Code.

The José Martí Pioneers Organization is self-governing, with periodic democratic elections to elect leaders for the collectives.

Paragraph 18

Concerning the supposed absence of independent mechanisms for monitoring the situation of children in institutions, Cuba believes that it is obvious that there are many different monitoring mechanisms, such as the family, the public prosecutor and the national and provincial advisers and inspectors responsible for education and re-education.

However, monitoring is basically carried out by governmental and non-governmental bodies which reflect the various interests of the community, given the close and multifaceted links between the institution in question, the President of the People's Council and the district delegates to the municipal assemblies, who are popular leaders, elected by direct secret ballot; all of these act as mechanisms for participatory democracy in the community where the institution is located.

Inspection, assistance and monitoring by social workers and other representatives from the women's organization, by the children's own organization and by neighbours who are members of the Committees for the Defence

of the Revolution, as well as the presence of representatives from workers' and farmers' unions working with the administration of the institution, keeping in mind the principles of the Convention, make it possible to identify, and provide real and effective solutions for, problems which may arise; nevertheless, a constant effort is made to improve the monitoring mechanisms in order to achieve the greatest possible effectiveness.

Paragraphs 19 and 35

The great effort made by Cuban society as a whole and the Cuban State to prevent and deal with abuse and mistreatment of children, where there is always room for improvement, is not limited to early warning, but is rather a multisectoral, multidisciplinary, interlinked system based on a holistic approach and under constant review.

The current system does not simply wait for accusations or claims to be made, but is rather designed so that monitoring by State bodies and non-governmental organizations can identify violations of children's rights in time, while the educational system operates independently to teach boys and girls about their rights and the methods and channels for making complaints in appropriate cases, to the police, the prosecutor's office and other authorities or governmental or non-governmental institutions. The basis for this is article 63 of the Constitution.

Paragraphs 20 and 40

The concerns about the increase in the number of children exhibiting antisocial behaviour and the adequacy of existing mechanisms to address those problems are dealt with in paragraphs 121 to 127, 129 and 132 of Cuba's report, while paragraphs 69 to 72 refer to the scientific and comprehensive approach used in the treatment of those minors.

The Committee's concerns apparently stem from the critical attitude adopted in paragraph 134 of the national report towards five areas where work was continuing in order to improve the treatment of children with behavioural problems.

While what is described there could be regarded as inadequacies, the existing mechanisms both in schools and in neighbourhoods allow for high levels of identification, and all the boys and girls identified are evaluated and when necessary guaranteed places in specialized schools where, along with other professionals, graduates from Cuban universities with diplomas in deviant behaviour and specialized in behavioural disorders, use a psycho-social approach to prevention and control. In recognition of the success of the Cuban system in the area of specialized education, our country has for several years now been the home of the Latin American Special Education Reference Centre.

Cuba has also experimented with designating a working group made up of community representatives to be responsible for some of these minors who might otherwise be sent to re-education centres. Generally speaking, the focus is on the family and social environment of minors with behavioural disorders or who might potentially suffer from them.

Paragraphs 21 and 37

Cuba is allocating all possible available resources to family planning and health education. There are effective family planning programmes, with universal coverage and no account taken of marital status or whether the relationship is stable, although they could be better if we have available enough different types of contraceptive for each case, and in sufficient quantities; supply is a problem under current economic circumstances.

For many years now, Cuba has had intersectoral and multidisciplinary programmes for sex education and family planning, and schools for parenting skills and responsible mother- and fatherhood. These programmes prioritize community, school and family through the national health and education systems and all communications media, and run alongside those given by civil society organizations, such as the Federation of Cuban Women, through their mass education activities.

The programmes include educational activities and actions on sex education, family planning, and reproductive health with a view, inter alia, to avoiding unwanted pregnancies and getting rid of stereotypes and taboos by tackling, amongst other issues, the subjects of adolescent pregnancies, abortion and single parents. As a result, the ongoing follow-up on these issues and the spot checks we carry out have shown that male behaviour patterns have been changing, and males are participating in family planning.

In the management of children infected with sexually transmitted diseases and human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS), all necessary conditions and safeguards are in place at both community and health institution levels.

Paragraph 22

The Committee, for lack of school drop-out statistics - which it did not request - erroneously concluded that there has been a decline in the number of children enrolled in secondary education and in the availability of scholarships for children to continue their education. In Cuba's responses to the "Questionnaire on indices for follow-up to the Santiago Agreement targets" of July 1997, we gave a school drop-out rate of 0.8 per cent for the 1995-1996 school year, with 6.7 years as the average length of primary education, and an enrolment rate in the first year of secondary of 98.0 per cent (1996-1997 school year). The reduction in total numbers of secondary school students is attributable to changes in the country's demographic make-up and not to a lack of students enroling.

Paragraphs 23, 42 and 43

Drug abuse and trafficking and child suicides, labour and prostitution, on which the Committee erroneously concludes that Cuba has made insufficient efforts to devise preventive strategies, are not social problems in our country.

Drugs arriving in Cuba are basically in clandestine transit by air and sea from foreign traffickers to other countries, principally the United States, the

largest consumer market, and are almost all detected by customs and frontier controls. A very strict procedure for destroying the impounded drugs is followed and action is taken against traffickers in criminal court; as part of its deterrent and punitive function, the law sets out heavy penalties for these crimes. There is also strict control over the sale of medicaments that can be used for such purposes. There have been only very rare incidences of Cuban citizens growing a few plants in small quantities in their own homes, and heavy penalties have been applied against them also.

On the issue of begging, in Cuba no citizen is abandoned to his fate and childhood is the first priority, as is shown repeatedly in the report, so no child is forced to sleep in the streets or work to survive.

The recent change in the Criminal Code (17 July 1997) categorized and stiffened the penalties for specific acts related to procuring and traffic in persons by penalizing anyone inducing, colluding in or instigating another to enter prostitution and the sex trade (any action inciting or exploiting sexual relations for gain). The penalties are even heavier if those involved are under 16 or if the acts are committed by someone who has authority over or care or custody of the minor.

Similarly, for cases of sexual abuse, in law there are offences against the normal course of sexual relations. These carry penalties, for adults, for rape, statutory rape, incest, pederasty with violence, and lewdness. In all cases, minors are guaranteed the psychological care they require.

Also, wide-ranging educational/preventive work is being done with parents and with adults in general through the schools, neighbourhoods and mass media towards developing all aspects of minors' physical and spiritual lives.

As a result of socio-psychological, anthropological and other studies, in 1973 the age of criminal responsibility in Cuba was set at 16 - which was not in contradiction with the principles of the Convention when it entered into force - and up til now we have not needed to change it and provide protection against certain sexual behaviours up to age 18, as the Committee recommends in its report, as to do so would be contradictory.

Paragraph 24

The Committee's concern about the juvenile justice system is groundless, and was answered in paragraphs 119 to 146 of Cuba's report. It is obvious from the information furnished that the Cuban juvenile justice system is compatible with the principles and provisions of the Convention. For instance, paragraph 136 of the report shows specifically that different treatment is accorded in Cuba to prisoners not only up to the age of 18 but even up to the age of 30. Nor can it be a matter of concern to the Committee that children are incarcerated together with adults, because it is clearly stated in that same paragraph that prisoners under the age of 20, not just under the age of 18, serve their sentences in institutions designed specifically for them or in sections where they are kept separate from older prisoners.

Paragraph 25

As to the Committee's recommendation that Cuba should consider withdrawing its Declaration relating to article 1 of the Convention, the Government of Cuba cannot at this time make any commitment of that sort, because it is a matter that must be considered by collegiate institutional and even parliamentary bodies, and would entail the review and amendment of a number of laws after careful study of psycho-social, educational, cultural and other factors.

Cuba's legislation is not incompatible with article 1 of the Convention, which defines a child as "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier". Paragraph 29 of Cuba's report indicates that the Civil Code of 1987 establishes that the age of majority begins on the 18th birthday or on marriage in the case of a minor, and that other ages may be established by law with respect to certain acts.

Paragraph 27

The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption has been in existence only a very few years; it was signed on 29 May 1993, entered into force on 1 May 1995 and, as at 27 March 1997, had 29 signatory States, only 14 of which had ratified it. Moreover, unlike many other international instruments, its authentic texts are only in English and French and not in Spanish. Having an authentic text in Spanish would almost be a condition for further universalization of this instrument, because many countries, like Cuba, have Spanish as their official language.

Cuba scrupulously observes the main precepts of the 1951 Convention relating to the Status of Refugees. The nation's Constitution and legislation contain provisions on the granting of asylum to persons persecuted for various reasons, and in practice the Cuban Government has given shelter to thousands of refugees worldwide, especially from Latin America and Africa, who have, without discrimination of any sort, received the benefits of its social system. Currently, about 1,700 African refugees are taking advantage of the nation's scholarship plan for general, vocational and university education.

The 1951 Convention was recently studied by an interdisciplinary working group, and the conclusion was that at this time it is not possible for us to accede to it because it contains regulations that are in contradiction with the national policy on migration, which is determined in part by the context of harassment on the part of the United States that conditions the life of the country and has for decades politicized the migration policy and the refugee question.

Paragraph 29

Using the Convention on the Rights of the Child as a political tool and a framework for action on behalf of children and incorporating policies, programmes, aims and goals reflecting the principles of the Convention in future national and local programmes of action on children is not at odds with Cuba's

approach, which in essence reflects the principles and provisions of the Convention and has set, and in some cases achieved, objectives and goals more stringent than the precepts of the Convention. This outlook will continue to be the compass that guides our action on behalf of children.

Paragraph 36

Cuba is acting on the suggestion to focus even greater efforts on measures to prevent accidents involving children. This is the approach we have taken in our strategy for dealing with the problem by means of joint multi-institutional action by governmental bodies and civil society organizations.

There is a National Commission on Accidents, and in 1996, a national programme on accidents was launched which made provision for and carried out activities involving training, exchanges and research, and a Manual for the Prevention and Handling of Accidents was drawn up, circulated and distributed to primary health care clinics and hospital centres throughout the country.

In the Brief of Procedures (Carpeta Metodológica), the document that guides the work of the Ministry of Public Health, the question of accidents is one of those given priority in maternal and child health. Family doctors and nurses work directly in the community with families, in conjunction with 70,000 volunteer health workers from the Federation of Cuban Women, to detect any potential accident risks in homes and in the community, eliminate high-risk situations and train families in accident prevention. The press, radio and television also help teach prevention through frequent public announcements aimed at adults and children.

Paragraph 39

To add to the information given earlier on family reunification, it can be said that the Cuban Government, in giving special attention to the family as the fundamental unit of society, is making efforts to ensure the family's integrity and stability.

Minor children are under the patria potestas of their parents, and only in exceptional cases prescribed by law can that authority be suspended.

The problem of migration has no legal bearing on the possibility of family reunification in Cuba, because abandonment of the national territory is a cause for suspension of the patria potestas in cases where it has been proven in legal proceedings that parents have abandoned their children.

Paragraph 40

Night work by young people is one of the issues that will have to be studied in connection with Act No. 13 of 1977 on Protection and Healthy Conditions of Work and its implementing legislation, the provisions of which will have to be harmonized both with the present situation in Cuba and with International Labour Organization (ILO) Convention No. 79 as it applies to night work by young persons under the age of 18.

With respect to the suggestion that the implementation of articles 28 and 32 of the Convention should be monitored more closely with reference to labour questions, we are complying with article 32, and have a labour inspection system under which compliance with existing legislation is monitored, steps are taken as needed to eliminate actual violations of the law, and disciplinary or criminal proceedings are brought against offenders.

Paragraph 43

Publicizing of the initial report and the written responses to the Committee's list of issues began from the moment work started on them, in that both documents are the product of discussion and input from many specialists and professionals in various State and non-governmental institutions, the final results of which are available to anyone interested. Moreover, the contents of both documents represent the summation of programmes, plans, reports, laws and the like that were widely publicized earlier and will continue to be publicized in the future. Other forms of publicity will be considered in the light of the funds and material resources available for the purpose, as conditioned by the serious economic difficulties the country is experiencing and by other important priorities.

Paragraph 44

With this extensive information and these broad considerations, the Cuban Government has responded to the wishes of the Committee and has concluded its communications with the Committee regarding its initial report.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 13 October 1997 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you herewith the official response of the Government of the Republic of Iraq to the report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq submitted to the Commission at its fifty-third session (E/CN.4/1997/57).

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly under agenda item 112 (c).

(Signed) Nizar HAMDOON
Ambassador
Permanent Representati

97-27304 (E) 241097 271097

ANNEX

Response of the Government of Iraq to the report of the Special Rapporteur on the situation of human rights in Iraq (E/CN.4/1997/57)

Introduction

1. The Government of the Republic of Iraq has examined the report of the Special Rapporteur to the Commission on Human Rights at its fifty-third session (E/CN.4/1997/57). Iraq is committed to the promotion of human rights, and it wishes to keep the international community informed of how matters are developing in Iraq and to expose the fabrications and allegations by which van der Stoel seeks to harm the Government and people of Iraq. In doing this, van der Stoel proceeds on the basis of hostile and preconceived attitudes and adopts an approach that seeks to sunder the national unity of Iraq and to incite sectarian and ethnic rivalries. He thus departs from the principles of impartiality, objectivity and fairness affirmed by the General Assembly, most recently in its resolution 51/105. In the seventh preambular paragraph of that resolution, the Assembly affirms the importance of the objectivity, independence and discretion of special rapporteurs on specific countries; and, in paragraph 5, it reaffirms that the promotion of all human rights should be guided by the principles of non-selectivity, impartiality and objectivity and should not be used for political ends. Taking account of the unusual circumstances in Iraq created by the military aggression against it, the maintenance of a comprehensive embargo that has entered its eighth year and the adverse effects the embargo has had on the promotion and improvement of the human rights situation in general, we present hereunder a response to the allegations made in the report. It has constantly been our practice to submit detailed responses providing numerous clarifications and the true facts, such as those contained in documents A/46/647, A/C.3/47/2, A/48/387, A/49/394, A/48/875, E/CN.4/1995/100, A/50/471, E/CN.4/1996/114 and E/CN.4/1996/119.

2. Close study of this report would reveal to any fair-minded reader that it is no more than an ill-considered and hasty restatement and re-compilation of the same allegations and claims van der Stoel has repeatedly made in all his previous reports. These reports also provide a clear example of his failure to evolve objective criteria for judging the credibility and trustworthiness of the information he obtains and to which he then gives currency. It is perhaps for this reason that his reports are characterized by such a great deal of confusion, given that they rely on hearsay information from hostile sources and not only lack value as data but are also unacceptable by the most elementary international legal standards.

3. In paragraph 5 of his report, van der Stoel seeks to remind Iraq of its freely undertaken obligations, claiming that there are no special circumstances that prevent Iraq from honouring its international undertakings. The Government of Iraq has always endeavoured to discharge its obligations under the international instruments and conventions mentioned. It has done so despite the exceptional circumstances, well known to the international community, that Iraq is experiencing because of the maintenance of the comprehensive embargo imposed

on it in August 1990 and because of the brutal military aggression of January 1991 that created highly abnormal conditions in all spheres of civilian life and for all groups of the population. Indeed, despite the difficulty and complexities of the present situation, Iraq is continuing to submit its country reports and to discuss them in the human rights treaty bodies, and this gives concrete expression to Iraq's firm desire to cooperate with the relevant United Nations bodies in this domain. Van der Stoel seeks to ignore the impact on Iraq of the maintenance of the economic embargo, while this is a fact whose tragic effects he has himself acknowledged. This robs his report of the objectivity, independence and discretion that special rapporteurs on human rights must have.

I. VIOLATIONS OF CIVIL AND POLITICAL RIGHTS

4. In this section, van der Stoel not only reiterates the accusations and allegations made in his previous reports but goes further and oversteps the bounds of his mandate in an attempt to disparage Iraq's national system, thus placing himself at the service of those hostile to Iraq in implementing their schemes for the fragmentation of its people and the sundering of its national unity.

5. In paragraphs 7 and 8 of his report, van der Stoel proceeds to ignore the democratic measures instituted by Iraq in 1995 and 1996, namely the amendment of the Iraqi Constitution to make the presidency subject to approval by a national referendum. The referendum then took place on 15 October 1995 in the presence of correspondents from Arab and non-Arab news agencies and journalists and parliamentarians from all the countries of the world who witnessed its fairness and its democratic nature. Elections to the National Assembly and to the local councils are also held in accordance with the law at the prescribed intervals, and implementation of the decrees and laws required by the exceptional circumstances in Iraq, as explained in document E/CN.4/1996/119, has been annulled or suspended.

6. His characterization of the nature of the political system in Iraq and his allegation that no opposition is allowed are incompatible with reality and groundless. It appears that van der Stoel has made no meticulous examination of the provisions of the Iraqi Constitution and of the laws in force that govern the democratic process and enable the Iraqi people to exercise its right freely to choose its representatives and its political system. There is, in this connection, a political organization known by the name of the "National Front of National Patriotic-Progressive Parties", and it comprises a number of parties and eminent Arab and Kurdish political personalities in Iraq that play an active and public role in political life in the country. There are also professional and cultural associations and trade unions. The Political Parties Law (30/1991) established the principle of a multi-party system. The Iraqi Constitution also stipulates that "The people are the source of authority and its legitimacy", and the powers of the President of the Republic are set forth in articles 57 and 58 of the Constitution. There is also the Council of Ministers, the exercise of whose functions is subject to the terms of the Constitution and the law. Its functions include the preparation of draft laws and their referral to the legislative authority concerned, the issuance of administrative regulations and decrees in accordance with the law, and the preparation of the plan and the

general budget of the State. Above all, the Iraqi Constitution governs the role of the people in exercising its political rights through the National Assembly, which represents the people in all its political, social and economic sectors and comprises representatives freely and directly elected by general secret ballot every four years. The Assembly considers draft laws, participates in enacting them, discusses the general domestic and external policy of the State, summons members of the Council of Ministers for questioning or to propose their dismissal, and exercises monitoring and consultative powers.

7. Van der Stoel's statement in paragraph 8 of his report that there is official corruption and that the population is subject to the arbitrary interests of a privileged class is untrue, is a perversion of the image of Iraqi society and is yet more evidence of failure to transmit a true picture of developments in the situation in Iraq. He is in a better position than others to know that the harsh conditions imposed on Iraq by a devastating embargo that has entered its eighth year would have destroyed the country's social structure had it not been for the dedicated commitment of the Government of Iraq to protecting the cohesion of the Iraqi people and safeguarding social and moral values and social solidarity.

8. We should like to point out in this connection that there are matters that are more basic, that have a greater impact on people's lives and that deserve to receive greater attention from the United Nations and bodies such as that for which van der Stoel is supposed to be acting. They include the question of international sanctions and the impact they may have on human rights anywhere in the world, including Iraq. Measures such as these have many adverse consequences for societies, including corruption and crime. In the case of Iraq, these are a result of the comprehensive embargo being maintained against the country, and the Government of Iraq is endeavouring to apply the laws in force meticulously with a view to limiting the impact of crimes threatening society.

9. Van der Stoel begins his section on the right to life, liberty and personal security by reiterating in paragraphs 9, 10 and 11 his allegations concerning the situation in the northern region, once again entangling himself in blatant fabrication. In his previous report (A/51/496 and Add.1), quoting what he calls the opposition, he provided an account of the execution of 96 officers of the Iraqi Army who were based in northern Iraq. In his current report, however, he states that they were Pesh Merga elements. This confirms that the sources on which he relies are mendacious and biased. The major Kurdish groups that participated with the Iraqi forces in their limited operations in August 1996 have affirmed that no such executions ever took place and have also told foreign news media that there was no activity by the Iraqi security services in northern Iraq.

10. In connection with the executions of persons in the city of Dohuk reported in paragraph 11 of the report, it must be said that the city in its entirety lies outside the area controlled by the central authorities and that the Government of Iraq therefore has no connection whatever with any incidents that may occur there. Our question here concerns the reasons that motivate van der Stoel to disseminate reports that he himself admits are unconfirmed and to put them into circulation and leak them to the press. This confirms our view

that his allegations lack the least degree of credibility and merely have the goal of defaming Iraq without good cause.

11. In paragraph 13 of the report, concerning the attempt to assassinate the President's son, Udayy Saddam Hussein, on 12 December 1996, van der Stoel seeks to ignore the fact that this was a terrorist act deserving of condemnation and indeed uses it as a pretext to level accusations at the Government of Iraq. Using his familiar approach of exaggeration and embellishment, he claims that the Government of Iraq executed and arrested thousands of people without judicial orders. This allegation is groundless and is incompatible with the most elementary rules of sound logic. Van der Stoel provides no material, tangible evidence on which to base his claims.

12. The allegations made in paragraphs 14 and 15 concerning the situation in southern Iraq were thoroughly refuted in all of the previous responses submitted by the Government of Iraq. It appears that the Special Rapporteur is seeking to prove them merely by dint of repetition. The situation in southern Iraq is stable and calm, and his assertion that the very presence of military and security forces constitutes a violation of human rights is a matter for surprise. This is a natural situation, and any State has the right to protect its security and stability by deploying its military and security services inside its territorial boundaries. The allegation that there have been campaigns of arrest and seizure and intermittent fighting in the area is groundless, and these are fabrications that exist only in the imagination of the Special Rapporteur. It is astonishing that, in his reports, van der Stoel should deny the Government of Iraq its legitimate right to maintain a presence inside its own territorial boundaries in the northern and southern regions of the country and that he should consider its doing so to be a violation of human rights. At the same time, however, he chooses to disregard the entry of foreign forces from neighbouring States into Iraqi territory and to ignore the consequences of that in terms of the killing of civilian, including women and children, the destruction of property and the flagrant violation of the sovereignty and independence of the State. This is further evidence of van der Stoel's failure to adopt a fair and objective approach in carrying out his task.

13. One of van der Stoel's sophistries is the statement in paragraph 16 of the report concerning "cruel punishments". He knows full well that the use of such punishments was discontinued under Revolution Command Council Decree No. 81 of 1996, as he himself established in his previous report. His reversion to this allegation is further evidence of his lack of objectivity and credibility and of the fact that he is continuing to stack the cards in order to misrepresent the facts.

14. In connection with paragraphs 17 and 18, concerning disappearances, we should like to refer to the response of the Government of Iraq contained in the annex to document A/49/394. The Iran-Iraq war of 1980 to 1988 and the 30-Power military aggression of 1991, with all the material and human disasters they brought with them, made it difficult to know with any precision everything about the residents of areas that became a theatre of military operations or of nearby areas such as border zones. The inhabitants of such places take refuge wherever they believe it to be safe or are forced to leave by hostile armed elements.

15. In paragraph 19 of his report, van der Stoel refers to the issue of the missing Kuwaitis, giving conflicting and inaccurate information with a view to influencing the working procedures of the relevant international agencies. In the first place, the issue is outside the scope of the mandate entrusted to him under the terms of the resolution by which he was appointed; and, in the second place, its inclusion under the rubric of "the situation of human rights in Iraq" is a major mistake and is out of place. As is well known, the issue is being addressed through the International Committee of the Red Cross (ICRC) as part of the joint activities of the Tripartite Commission on the search for missing persons. In addition to Iraq and ICRC, its membership also includes Kuwait, Saudi Arabia, the United States and the United Kingdom. The Government of Iraq has been making serious efforts to resolve this humanitarian issue to the extent that this is possible. Iraq continues to attend the periodic meetings of the Tripartite Commission, the most recent of which was in September 1997. As part of Iraq's endeavour to advance the search for missing Kuwaitis, the Iraqi delegation made a number of proposals at the meeting of the Tripartite Commission held in Geneva on 12 June 1996. They concerned Iraq's intention to circulate the names and photographs of missing Kuwaitis and others on wall posters to be affixed at specified sites in a number of Iraq's governorates, to publish their photographs in newspapers and to seek information on them from citizens. Iraq also expressed its readiness to enter into negotiations with ICRC with a view to concluding an appropriate agreement for ICRC to visit places of detention in Iraq so as to help complete the task entrusted to the Tripartite Commission. ICRC welcomed this. Iraq has announced that it stands ready to act in accordance with international norms and with the principles elaborated in the context of the work of the Tripartite Commission, and it has remained open to all the initiatives put forward by States and organizations that are not members of the Commission with a view to finding a speedy and definitive solution to this humanitarian issue. Iraq has approved four initiatives submitted to it by the League of Arab States. Under their terms, it has received three envoys from the League since 1991. It agreed to two other initiatives. One was undertaken by King Hassan II of Morocco, and under it Iraq declared its readiness to form a joint committee on the search for missing persons. A second initiative came from Qatar, and under it Iraq expressed its readiness to receive a delegation representing the governments of the Gulf States together with two Kuwaiti parliamentarians. The Kuwaiti side, however, rejected these initiatives.

16. At another level, Iraq responded positively to the relevant initiative of the President of the Russian Federation and accordingly received a Russian delegation. However, the Kuwaitis rejected this initiative also. Iraq also agreed to the initiative put forward by President Suharto of Indonesia acting in his capacity as Chairman of the Movement of Non-Aligned Countries, but the Kuwaiti regime rejected this initiative too. The most recent initiative on the matter to be rejected by the Kuwaiti regime was that announced by the delegation of Iraq at the ninety-third Inter-Parliamentary Conference, held in Madrid at the end of 1995, in which Iraq expressed its readiness to receive a committee formed by the President of the Inter-Parliamentary Union that would have complete freedom to conduct an investigation in Iraq and establish the facts of the matter. Although Kuwait rejected this, the Inter-Parliamentary Council approved the Iraqi initiative.

17. At the series of meetings of the Tripartite Commission held in Geneva on 12 June 1996 the Iraqi delegation revived the previous proposals made by Iraq concerning participation by the League of Arab States in bringing the facts of the matter to light. It presented a proposal in which it expressed Iraq's readiness to receive a committee in which representatives of ICRC, the League of Arab States and countries such as Morocco, Algeria and Egypt would join representatives of Iraq, Saudi Arabia and Kuwait in ascertaining the true state of affairs with respect to the allegations that there are still Kuwaiti prisoners or captives in Iraq. However, the Iraqi authorities elicited no reaction on the matter from their Kuwaiti or Saudi Arabian counterparts. From the foregoing, it can be seen that Iraq has demonstrated its good faith more extensively than van der Stoel is prepared to admit in paragraph 24 of his report. Iraq is more anxious than he is that this humanitarian issue should be resolved and that its international obligations should be discharged. Van der Stoel, however, acting with malice aforethought, is impelled to deny the sincere efforts made by Iraq in this regard, which are well known to ICRC.

18. In paragraphs 25 to 30 of the report, van der Stoel makes a series of allegations and claims for which there is no evidence and which are incompatible with the real situation. There is in Iraq, as stated in paragraph 6 above, a National Front of Iraqi parties that also comprises eminent political, social and cultural personalities who contribute to Iraqi political life. There is also the Council of Ministers, and the National Assembly represents all classes of the Iraqi people.

19. Furthermore, President Saddam Hussein enjoys great popular support that has found concrete expression on numerous occasions and most recently in the national referendum on the presidency held on 15 October 1995. The result of the referendum was that 99.96 per cent of the people's votes supported the election of President Saddam Hussein to the office, and this was witnessed by the observers, journalists and parliamentarians who were in attendance.

20. We feel it is necessary to call attention to the tone adopted by van der Stoel in his report, which violates the most elementary rules of diplomatic courtesy when referring to Iraq's national leadership. This shows his ill will in deliberately offering offence to the symbols of national authority in Iraq.

21. When he claims that "the ... creative sides of ... society have been suffocated" and that "cultural ... and literary endeavour has been vanquished", this reveals that he is distorting the facts and that he lacks fairness and objectivity. He does not call things by their true names. The suffocation of the creative sides of society that he alleges is one of the objectives of the comprehensive economic embargo that has been maintained against the people of Iraq since 1990 and that has extended to all aspects of life, including cultural aspects. This has consequently inhibited creative capacities and has had an adverse impact on cultural, artistic and literary endeavours. Despite these difficulties, the Government of Iraq is nevertheless committed to promoting and strengthening cultural, artistic and scientific activities in Iraq by providing sponsorship. It encourages the establishment of scientific institutions, houses of culture, scientific advisory councils and cultural and literary forums and associations and the holding of international poetry, artistic and literary

festivals in which a large number of cultural and literary personalities participate.

22. In paragraph 26 of his report van der Stoel states that four Iraqis were sentenced to death for what he calls "media crimes". This is a pure fabrication and a figment of van der Stoel's imagination. These are mere allegations for which no probative evidence is adduced, such as names, addresses and the verdicts rendered. This paragraph also reiterates the statement made in previous reports concerning the Iraqi Press Act. This illustrates van der Stoel's hostile attitude to Iraq, since the Government of Iraq has already provided a detailed explanation of the nature of this law in the response it submitted to the Commission on Human Rights at its fifty-third session.

23. Paragraph 27 contains an attempt to intrude a personal conviction of van der Stoel's and to postulate it as a matter of fact while it actually lacks the most elementary characteristics of sound and logical thinking and is indeed incompatible with what van der Stoel himself maintains in paragraph 26 of this same report. That there are "a number of young minds" that believe in the ideas of the Baath Party and in the leadership would confirm that this leadership is accepted and these ideas find fertile ground and take root among young people in such a way as to motivate them to participate in the domains of journalism and culture. The responsible approach adopted by the Iraqi press does not permit attacks on persons but endeavours to analyze and criticize improper practices in State institutions, particularly those directly connected with the lives of citizens.

24. Then, in paragraph 28 of the report, van der Stoel speaks of the Law on Publications, which is really the same subject as that addressed by the Law No. 206 of 1986 mentioned in paragraph 26. This illustrates the confusion, disarray and lack of precision that characterize his reports. It is a shame that this should emanate from a Special Rapporteur who is supposed to have capacities that would qualify him for an international assignment such as this. He is of the view that prohibiting anything that may damage relations with Arab countries, the supervision of foreign publications and the requirement for journalists to obtain permission to pursue their profession constitute an instrument for the suppression of opinion and expression. This is contrary to the most elementary logic. Any country has the right to forbid the publication of anything that harms its relations with other countries. Furthermore, the supervision of foreign publications is customary in most countries of the world, and they do not allow the circulation of foreign and domestic publications that are not in keeping with the prevailing religious and moral values in their society. They also do this in order to ensure that the press is a means of serving society and not of destroying it. There is nothing blameworthy in that, and it does not detract from those countries in any way. In connection with his reference to the need for journalists to obtain permission to pursue their profession, it must be said that there is no one in the world who pursues a profession of some kind who does not obtain a license to do so.

25. In connection with van der Stoel's remark in paragraph 29 that Iraqi law includes provisions against espionage, we have to ask him to tell us of one State in the world whose laws and enactments do not include penalties for

persons who commit the crimes of espionage and high treason or of working on behalf of another State.

26. The allegations made in paragraph 30 of the report that journalists and writers are subjected to harassment and that some have fled Iraq are absolutely untrue. While some have gone abroad, this is because of the difficult economic circumstances resulting from the economic embargo that is being maintained against Iraq and that van der Stoel deliberately seeks to ignore. These have, moreover, left their country in a normal manner.

27. In paragraph 30 of the report, van der Stoel also claims that Iraqi writers and journalists in Jordan are subjected to harassment. This is something that has absolutely never happened, and the allegation is groundless.

II. THE RIGHT TO FOOD AND HEALTH CARE

28. Although in paragraphs 32 and 33 of his report van der Stoel notes the alarming situation of most of the population in Iraq resulting from the maintenance of the economic embargo, and although he welcomes the signing of the memorandum of understanding between the Government of Iraq and the United Nations on the implementation of the food-for-oil resolution, he does not trouble himself to seek the reasons for the delay in giving effect to the memorandum of understanding or to identify those creating obstacles to its smooth implementation. His assessment of this situation, one that affects the lives of the millions of Iraqis who have been deprived of food and medicine and are still awaiting the benefits of the memorandum of understanding, lacks objectivity in that it does not establish the responsibility of those impeding its implementation, principally the United States of America and the United Kingdom. If van der Stoel is to claim credibility and impartiality for himself, then he must identify the parties responsible for the failure of the memorandum of understanding to achieve the desired results. The glaring examples of the obstacles created by these countries include their rejection of a contract for the purchase of 100 ambulances requested by the Ministry of Health in order to meet the needs of Iraqi hospitals and strengthen an emergency medical system that is suffering from great shortages. Hundreds of patients are dying because it is not possible get them to hospital in time. The latest statistics indicate that only 25 per cent of Ministry of Health contracts had been implemented as of September 1997 and that 21 contracts had been blocked and 77 others placed on hold as of 9 September 1997. The Government of the Republic of Iraq encloses herewith a copy of a letter dated 23 August 1997 from the Minister for Foreign Affairs of Iraq addressed to the Chairman of the Security Council Committee established pursuant to resolution 661 (1990) (appendix I) and a copy of a letter dated 4 September 1997 from the same Minister addressed to the Secretary-General of the United Nations (appendix II). In these letters, the Minister explains the difficulties encountered in the first phase of implementation of resolution 986 (1995) and the delays that have beset the process of approving contracts submitted by Iraq, and he calls for pressure to be brought to bear on the representatives of the United States of America and the United Kingdom to release the contracts placed on hold as a means of achieving the humanitarian objectives of the memorandum of understanding.

III. CONCLUDING OBSERVATIONS

From a perusal of van der Stoel's report, the following can easily be noted:

(a) The report contains nothing that is new or that supplements the statements and allegations made by the Special Rapporteur in all his previous reports. This indicates in a manner that leaves no room for doubt that he is endeavouring to achieve political objectives rather than to serve the worthy cause of human rights.

(b) In obtaining his information, van der Stoel uses sources that are known for their hostility to Iraq and that have the goal of harming it. He himself admits, moreover, that what he obtains are claims, unconfirmed reports and unattributed statements, and this deprives his reports of trustworthiness given that they are based on hearsay evidence that lacks proof.

(c) Van der Stoel's persistence in holding the political leadership of Iraq responsible, as he claims, for alleged violations of human rights is to be regarded as open interference in the internal affairs of Iraq and a transparent attempt to disparage the legitimate national political system. This constitutes a violation of the right of the Iraqi people to self-determination and to non-interference in the country's internal affairs.

(d) In the matter of the missing Kuwaitis, the Government of Iraq is cooperating actively by making sincere efforts in the Tripartite Commission and by proposing and accepting initiatives. This question is in any case outside the scope of the Special Rapporteur's mandate.

(e) Iraq is anxious to cooperate with the United Nations in implementing the memorandum of understanding under resolution 986 (1995) so as to mitigate the suffering of its people and safeguard its sovereignty and territorial integrity. It is also anxious to resolve any technical problems encountered in the process so as to eliminate the obstacles created by the United States and the United Kingdom to the flexible implementation of the memorandum of understanding. The humanitarian objectives of the memorandum of understanding may thus be achieved.

APPENDIX I

Letter dated 23 August 1997 from the Minister for Foreign Affairs of Iraq addressed to the Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

After the signature on 4 August 1997 by the Secretary-General of the United Nations of the procurement and distribution plan for the second phase of implementation of the memorandum of understanding based on Security Council resolutions 986 (1995) and 1111 (1997), I consider it appropriate to take up with you the state of implementation of the first phase. Extreme difficulties have been experienced in gaining approval of contracts, as the Secretary-General noted in his report to the Security Council of 2 June 1997 (S/1997/419).

Although more than two and a half months have elapsed since the first period for the implementation of the procurement and distribution plan expired, the secretariat of the 661 Committee still has more than 60 contracts that it has yet to prepare for circulation to Committee members. You will recall that at the meeting I had with you when I was in New York last March I raised the issue of the delay in the circulation and approval of contracts. On the same occasion, I put forward a number of practical and technical suggestions with a view to expediting the completion of the study of contracts and their circulation to members of the Committee. However, the measures taken by the Committee have been insufficient, and have not brought about the necessary acceleration in the execution of contracts. There is still a considerable delay before contracts referred to the secretariat of the Committee are circulated to its members.

We request that the Security Council Committee established by resolution 661 (1990) should take the measures necessary to ensure that the preparation and circulation of contracts to the members of the Committee are expedited. This is particularly important since we have in fact begun to sign contracts for the purchase of foodstuffs, medical supplies and other basic requirements for the second phase of the implementation of the memorandum of understanding. The fact that procurement contracts submitted to the secretariat of the 661 Committee during the first phase have been subject to this delay will have a negative effect on the progress of second-phase contracts, and will complicate not only the work of the Committee and its secretariat, but also the plans for the distribution of foodstuffs, medical supplies and other basic requirements, which have been undertaken by the relevant Iraqi government departments in accordance with the new distribution plan signed by the Secretary-General of the United Nations.

As Chairman of the 661 Committee, you are undoubtedly directly acquainted with the difficulties and obstacles that still continue to be raised by two members of that Committee, namely the United States and the United Kingdom, to the proper implementation of the provisions of the memorandum of understanding by placing blocks or holds on contracts for the purchase of food, medicines and other basic requirements. In doing so, these two countries adduce flimsy pretexts that are entirely at variance with the provisions of the memorandum of

understanding and the humanitarian purposes declared in the above-mentioned Security Council resolutions. A hold has now been placed on more than 100 contracts, while 20 have been blocked.

I enclose a schedule of the contracts on which a hold has been placed, arranged by country, showing the companies that have submitted applications to supply Iraq with food, medicines and other basic requirements in accordance with the procurement and distribution plan for the previous phase.

I request you to raise this issue with the representatives of the United States and the United Kingdom, and urge them to lift the holds and blocks they have placed on contracts, so that these countries or their companies may continue to provide Iraq with humanitarian supplies in accordance with the provisions of the memorandum of understanding and Security Council resolutions 986 (1995) and 1111 (1997). Otherwise, it is not possible to interpret the obstinacy of the representatives of the United States and the United Kingdom as anything other than political action directed against the countries and companies concluding contracts with Iraq, particularly since those two countries persist in using Security Council resolution 986 (1995) for narrow political purposes that are incompatible with the humanitarian aims of that resolution.

We hope that the secretariat of the Committee will accelerate submission of the contracts registered with it, and that the 661 Committee will deal with them as quickly as possible, as well as with the contracts on which holds and blocks have been placed and those that have been submitted by the relevant Iraqi parties as replacements for blocked contracts. The continuation of the current methods of work of the Committee constitutes a deliberate delay in the arrival of humanitarian supplies to Iraq.

We suggest that the 661 Committee should conduct an objective, professional and administrative review of the manner in which the previous phase of the procurement and distribution plan has been implemented, with a view to eliminating all the negative aspects and procedures that led to the delay and dilatoriness by which it was characterized, and which all but emptied Security Council resolution 986 (1995) and the memorandum of understanding of their content and turned them into something to be exploited for political purposes that bear no relation to any humanitarian objective.

(Signed) Mohammed Said AL-SAHAF
Minister for Foreign Affairs
of the Republic of Iraq

APPENDIX II

Letter dated 4 September 1997 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General*

I have the honour to refer to my letter dated 8 August 1997 (S/1997/629), in which I described in detail developments during the first period for the implementation of the procurement and distribution plan. Since that date, there has been little change in the situation. The secretariat of the Committee established by resolution 661 (1990) still has before it 57 contract applications which it has not yet processed for circulation to members of the Committee, even though they were registered a long time ago. Those applications are in addition to the 83 applications already on hold - placed on hold for flimsy reasons at the request of the representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland. They are also in addition to the 21 applications which the two aforementioned States got the Committee to cancel.

We have undertaken consultations with the Secretariat concerning your draft report to the Security Council under resolution 1111 (1997) concerning the first 90 days of the second period, and we continue to encounter the same difficulties and obstacles regarding the approval of contract applications as during the first period, together with delays in the delivery of humanitarian items to Iraq. Delivery of such items was the declared objective of Security Council resolution 986 (1995). Three months have already elapsed since the end of implementation of the first period, meaning that three months ago Iraq had pumped the full amount of petroleum indicated on 31 May 1997. Despite the many appeals and letters to you, neither the United Nations Secretariat nor the Committee established by resolution 661 (1990) nor its secretariat has shown any readiness to try to respond to our legitimate requests to expedite the contract application procedure and urge the representatives of the United States and the United Kingdom to lift the hold on procurement contracts for food, medicines and other basic humanitarian requirements.

I raise these questions with you, for you are the depositary of the memorandum of understanding and are directly responsible for proper implementation of its provisions. The memorandum was signed by the Secretariat. Iraq is fulfilling all its obligations under its provisions and is cooperating with your representatives in Baghdad to implement them in a transparent and professional manner. The Secretariat, too, must assume its corresponding responsibilities and expose to all the members of the Committee established by resolution 661 (1990) in general, and to the representatives of the United States and the United Kingdom in particular, the consequences of the delay in delivering humanitarian items, as described in your draft report which we have discussed. The continuation of this situation and the negative attitude and obstructionism are incomprehensible and highly regrettable. We can only reaffirm that compensation and levies based on petroleum revenues have now become the objective of resolution 986 (1995), for we do not see any attention

* Originally issued as S/1997/690, annex.

being paid on the humanitarian level to the delivery of items to Iraq, which was the purpose of the aforementioned resolution.

In Security Council circles, there have recently been communications and talk about the so-called mismanagement of the second period. The truth is that we have respected the provisions of the two relevant resolutions and of the memorandum of understanding as they relate to the beginning of the pumping of petroleum, in accordance with the schedule observed during the first period. The provisions of resolutions 986 (1995) and 1111 (1997) and of the memorandum of understanding, taken as a whole, stipulate that the volume of petroleum pumped will be such that the corresponding revenue will amount to $2 billion for the six-month period. The delivery of food, medicines and other supplies for essential civilian needs during the same period would correspond to that amount. Since that is what happened during the first period, the pumping of Iraqi petroleum began after the approval by the Secretary-General of the procurement and distribution plan, which is an essential element in the implementation of the memorandum of understanding. The pumping of petroleum during the first six-month period began in earnest, and began during the scheduled time-frame, despite the problems caused by the contract application procedure within the context of the procurement and distribution plan of the Committee established by resolution 661 (1990).

You will remember that you approved the procurement and distribution plan on 4 August 1997, and that marked the beginning of the pumping of petroleum for the second period. That is a natural and logical operation that will last six months as from that date. During the period referred to in the resolution and the memorandum of understanding, we look forward to an approval mechanism for contract applications submitted by companies and States entering into contracts with the relevant Iraqi parties, as well as to the import into Iraq of items covered by contracts during that period, and the removal of the obstacles encountered during the first period.

The interpretation which the United States and the United Kingdom are seeking to impose is purely formalistic and is based on the lack of linkage between resolution 986 (1995) and the memorandum of understanding on the one hand, and paragraph 1 of resolution 1111 (1997) on the other. The interpretation is neither correct nor realistic. It would mean that Iraq would have to pump the full amount of the petroleum authorized by the resolution in four months. As for the import of food, medicines and other items, the period would begin without any limits being fixed by the Security Council or the Committee established by resolution 661 (1990), the objective, according to the United States interpretation, being to apply the six-month condition to the export of Iraqi petroleum, but not to the import of humanitarian articles into Iraq. Iraq cannot accept that sinister interpretation, for the sale of petroleum for the purchase of food represents a deal whose two components are interdependent and complementary. It is inconceivable that one component could come into play while the other is blocked.

I hope that you understand Iraq's position on this question, and I ask you to intervene personally to bring the facts before the members of the Security Council so as to promote the objective of Security Council resolution 986 (1995) and the memorandum of understanding. I also hope that you will take the

necessary measures to encourage the secretariat of the Committee established by resolution 661 (1990) to circulate to its members all the procurement contracts registered with the Committee, and that you will exert pressure on the representatives of the United States and the United Kingdom to lift the hold placed on contract applications. Otherwise, we very much doubt that it will be possible to realize the humanitarian objectives of the memorandum of understanding.

I should be grateful if you would have this letter circulated as a Security Council document.

(Signed) Mohammed Said AL-SAHAF
Minister for Foreign Affairs of
the Republic of Iraq

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 11 November 1997 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a memorandum in connection with General Assembly resolution 51/117 of 12 December 1996, entitled "Situation of human rights in Myanmar" (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly under agenda item 112 (c).

(Signed) Win MRA
Ambassador
Permanent Representative

97-31659 (E) 201197

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Annex

MEMORANDUM CONCERNING THE SITUATION OF HUMAN RIGHTS IN MYANMAR

Introduction

When a draft resolution on the "situation in Myanmar" was adopted for the first time by the United Nations General Assembly, the delegation of Myanmar did not take part in the adoption, since the draft resolution was found to be highly intrusive, amounting to interference in the internal affairs of a sovereign State. Successive resolutions on Myanmar, instead of depicting the objective realities prevailing in the country, only attempted to underline the negative elements as perceived in some quarters. They were used as devices to put pressure on the Government. Since the resolutions failed to give due recognition to the significant progress and developments that have been achieved and were based primarily on unsubstantiated allegations, the delegation of Myanmar dissociated itself from the adoption of those resolutions.

Resolutions on Myanmar maintain a distinctive characteristic, especially in terms of co-sponsorship. They are glaringly co-sponsored by a particular group of countries and a few others that are linked with them. The majority of co-sponsors represent one particular geographical area, clearly demonstrating a clash of cultural values and traditions between them and Myanmar. It is therefore evident that the co-sponsors lack a clear understanding of Myanmar's concept of human rights, their situation in Myanmar and its root causes.

Myanmar's concept of human rights is based on traditional and cultural values, and priority is given to the promotion of time-honoured traditions, values and the rights of society as a whole. A developing third-world country like Myanmar has to give priority to basic human needs such as food, clothing and shelter and the right to live in peace and security.

As a matter of policy, Myanmar does not condone human rights violations since it is committed to the principle enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights.

Myanmar is home to over 135 national races. Unity among the diverse national races is essential for the preservation of Myanmar's independence and sovereignty. All of the national races had lived through weal and woe until the annexation of Myanmar by the British. Many of them took up arms against the central Government immediately after independence as a result of the divisive policy pursued by the colonialists vis-à-vis the national races of Myanmar. The internal strife lasted over 40 years, and it gave rise to unstable conditions in the country, hindering the economic development. For these reasons, the question of national reconsolidation in Myanmar is deeply rooted in history and is far more difficult to comprehend than generally realized. When the State Law and Order Restoration Council assumed national responsibility, it placed at the top of the national agenda the achievement of national reconciliation and reconsolidation by making peace overtures to the insurgent groups in 1989.

Since then, the State Law and Order Restoration Council has made a remarkable achievement in national reconsolidation, with the return to the legal fold of 16 armed groups and the unconditional surrender of the drug-trafficking Mong Tai Army. As a consequence, peace now prevails in the country as never before. Places previously designated as unsafe are now undergoing rapid rehabilitation and development.

To sum up, due to the relentless efforts of the Government, Myanmar is witnessing unprecedented achievements in all its national endeavours. If these achievements were given due recognition without negativism and subjectivism, more understanding would be created among the delegations in the consideration of the situation in Myanmar.

This memorandum provides information in order to shed light on the present conditions in the country.

Admission of Myanmar as a member of the Association of South-East Asian Nations (ASEAN)

Myanmar's policy of upholding the five principles of peaceful co-existence in its international relations and ASEAN's policy of constructive engagement have achieved a result which will serve the long-term interests of regional peace, stability and prosperity. On 23 July 1997 the Union of Myanmar, together with the Lao People's Democratic Republic, was admitted as a member of ASEAN at a ceremony held in accordance with the unanimous decision taken at the meeting of ASEAN Foreign Ministers held in Kuala Lampur, Malaysia, on 31 May 1997.

Amid various attempts on the part of certain Western countries to derail Myanmar's admission to the Association, ASEAN demonstrated its clear understanding of Myanmar's problems in their true perspective. This, coupled with the far-sighted and constructive policy of ASEAN, finally led to its decision to admit Myanmar into the regional grouping.

Myanmar's admission to ASEAN is a significant landmark in the contemporary history of Myanmar. It is an important achievement for ASEAN as well since the vision of ASEAN's founding fathers has come closer to achievement with two new members, whose integration into the mainstream of ASEAN activities is bound to have a positive influence on the region, thereby contributing in the long run to the preservation of international peace and security.

With its admission to ASEAN, Myanmar's commitment to the interests of the region is irrevocable. As stated by H.E. U Ohn Gyaw, Minister for Foreign Affairs of the Union of Myanmar, at the ceremony, Myanmar is determined to fulfil its responsibilities and obligations as a member at both the national and regional levels and poised to become a positive factor for the region and the world at large.

Myanmar is also taking an active part in regional economic cooperation. Myanmar took another important step when it joined BIMST-EC (Bangladesh, India, Myanmar, Sri Lanka and Thailand - Economic Cooperation) in August in 1997.

Achievement in national reconsolidation

Fully aware of the vital importance of the unity of the national races for the preservation of independence and sovereignty as well as for the economic and social development of the country, the State Law and Order Restoration Council (SLORC) has given priority to the strengthening of unity among the national races. Since 1989, less than one year after it assumed national responsibility, the SLORC has made serious and strenuous attempts to achieve national reconciliation with the national races, by inviting the insurgent groups to return to the legal fold. After initial contacts had been made with the armed groups, the Government continued to make attempts to build confidence between it and the armed groups by unilaterally suspending military offences against them. At the same time, the Government strove for the development of border areas and national races, launching infrastructure projects in the border areas. A separate Ministry was also established to supervise the implementation of those projects. The remunerations of governmental employees serving in those areas were also doubled and other facilities were also provided as incentives to enhance their service for and commitment to the development of those areas. In addition, in areas where poppy cultivation was the main source of income, crop substitution as well as income substitution schemes were implemented with increasing success. These schemes are still going on.

The genuine efforts of the Government for the development of border areas and national races have enhanced the national races' confidence in the Government. With full trust in the Government, 16 armed groups have returned to the legal fold and they are now actively engaged in the development tasks of their respective regions. This is a remarkable achievement, unprecedented in Myanmar's efforts to achieve national reconciliation. Never in its modern history have such a large number of armed groups returned to the legal fold within so short a span of time.

The Karen National Union (KNU) is the only armed group which remains outside the legal fold. Determined to achieve the goal of national unity, the Government even suspended all military operations against the KNU and subsequently held four official rounds of peace negotiations with the KNU (December 1995, February, June-July, November 1996). Sincerely convinced of benefit for the country from the success of these peace negotiations, the Government made every effort in good faith to achieve agreement with KNU. Although negotiations were close to success, they failed to bear fruit, principally due to KNU's rejection of terms similar to those which the Government had offered to and had been already accepted by other armed groups. It was the KNU that unilaterally suspended the peace talks. In addition, it exploited the respite provided by the peace talks, strengthening and reinforcing its units. It also made political moves by sponsoring meetings of anti-government groups such as the National Democratic Front (NDF), the Democratic Allies of Burma (DAB) and the National Council of the Union of Burma (NCUB). It issued announcements against the Government while at the same time committing terrorist acts - i.e., the bomb explosion at the Kaba Aye Pagoda in Yangon and mining of Yangon-Mandalay passenger train.

Since a large number of KNU's members have returned to the legal fold, the KNU is now composed only of few old guards, much diminished in strength. From

February to July 1997, over 1,000 members of the KNU alone returned to the legal fold and traded their arms for peace.

The KNU's raison d'être is the continued existence of the above-mentioned anti-government groups. For this reason, unscrupulous elements outside the country are providing the KNU with all kinds of assistance.

National Convention

Myanmar is in the process of establishing a multi-party democracy. Myanmar is not yet a fully functioning democracy. It is the present Government that is endeavouring to effect the transition to multi-part democracy. Since Myanmar is composed of over 135 national races, it is essential to have an enduring constitution that will safeguard the interests of all the national races. This is being undertaken through a National Convention, a process being carried out patiently and systematically. Since none of the national races in Myanmar has ever been engaged in such a process, it is vitally important for the National Convention to take adequate time so that a firm and enduring constitution will emerge from the process.

The National Convention is a systematic political process in which political party delegates, representatives-elect, delegates of national races, peasant delegates, worker delegates, intelligentsia delegates, service personnel delegates and invited persons participate. These delegates represent all walks of life in the country. The National Convention has approved 15 chapter headings of the Constitution and laid down 104 fundamental principles. It has also adopted detailed principles to be used under the chapter headings of the State, the State structure and the Head of State and the detailed principle on self-administered areas/zones and principal branches of the State structure - the legislature, the executive and the judiciary.

It is worth noting that the structure of the new State constitution already approved by the National Convention will provide a greater degree of autonomy - that is, legislative, executive and judiciary power - to the states and regions than was ever provided in Myanmar since independence. This new entity in the State structure, therefore, entails difficult and delicate discussions on how to share the power between the central organs of the State and the states/regions. This is a very delicate matter with serious implications for the future of the country.

Although, the plenary of the National Convention is not in session, the National Convention process is not at a standstill. Discussions are going on in the working groups of the National Convention to achieve genuine consensus of the national races on the matter of power-sharing.

Disturbance to peace and stability

In late 1996 and early 1997, anti-government elements engaged in subversive activities with the ulterior motive of creating a chaotic situation in the country.

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The first such instance was the student unrest that erupted in December 1996. It was not a spontaneous movement, touched off by students' resentments against the Government, as often alleged. The cause of the unrest was a trivial quarrel between three students and some civilians at a restaurant near a bus terminal in Yangon on 20 October 1996. The students were incited by politically motivated elements to take to the streets and to demonstrate against the Government. On investigation, a large number of members of a political party, including its leadership, were found to have been responsible for the incidents. In short, due to the incitement orchestrated by politically motivated elements, a simple quarrel grew into widespread unrest. The Government had to take action against 11 members of that political party and 23 other persons, none of whom were students.

The student unrest created an atmosphere on the campuses which was not conducive to the peaceful pursuit of studies. As a result, classes at universities were temporarily suspended to avoid further unrest and to safeguard public order. Since the atmosphere has greatly improved, some universities and all post-graduate courses have now resumed, and efforts are also under way to resume all the classes.

When the student unrest failed to create a chaotic situation in the country, as desired by them, the same politically motivated elements intensified their activities to a new level by resorting to terrorist acts. On 25 December 1997, two bombs exploded at the Kaba Aye Pagoda in Yangon where the Buddha's Sacred Tooth Relic, on loan from China, was displayed for public worship. Taking place where a large number of pilgrims were paying homage to the Sacred Tooth Relic, one explosion killed five innocent people. This blasphemy was, on investigation, found to have been committed by a bomb squad dispatched by the KNU and anti-government expatriates in collusion with some elements inside the country.

In March 1997, those elements, taking advantage of an incident involving a Buddhist girl and a Muslim youth, incited some Buddhist monks in Mandalay. The motive was obviously to create misunderstanding between the two religions. They selected Mandalay where there is a large population of Buddhist monks. The authorities concerned, with the cooperation of the leaders of both religious communities, took appropriate measures, and the problem was peacefully resolved.

Again on the evening of 6 April, a parcel bomb exploded at the residence of Secretary (2) of the SLORC, killing his eldest daughter, a mother of two small children. On investigation, the plan for a series of terrorist attacks, including the parcel bomb explosion, was hatched by some expatriate groups, together with members of other unscrupulous elements based in Japan. The Government has already sought the cooperation of the Japanese authorities in this matter.

It may also be recalled that in May of 1996, the National League for Democracy (NLD) attempted to hold a meeting with a view to drawing up a parallel constitution, although it had been participating in the National Convention process until November 1995. At that time, NLD was holding weekend gatherings where it inflamed the people and slandered the Government and the Tatmadaw (armed forces). These acts to undermine peace and stability compelled the

Government to proclaim law No. 5/96 which contains provisions any violation of which carries imprisonment for a term of a minimum of 5 years to a maximum of 20 years, with fine.

On 22 and 26 May 1996, the NLD held its anniversary meeting under the chairmanship of U Aung Shwe and a Central Executive Committee member, without seeking permission, though required by law. Seventy party members were present at the meeting. In connection with these meetings, it was alleged that the Government had arrested NLD members (A/52/170). There were no arrests whatsoever. The fact of the matter is that local governmental authorities persuaded the NLD members of their respective jurisdictions to refrain from acts that might be tantamount to undermining the community's peace and stability and tranquillity and prevalence of law and order. Had they committed these acts, the authorities concerned would have been required to take legal action against them under Law No. 5/96, which then would entail their imprisonment. Taken with a view to avoiding such an eventuality, the actions of the authorities were good-intentioned and preventive in nature.

The NLD made a new attempt to hold another public meeting on 27 and 28 May 1997 without seeking permission from the authorities concerned. It was learnt that the NLD did not even make preparations for the holding of this particular meeting. The fact that they did not seek permission, in defiance of the existing laws, cannot but be construed as a deliberate attempt to provoke the Government to take action against the NLD members with the ulterior motive of creating unfavourable international reaction.

There were no persons detained in connection with those NLD commemorative meetings.

In dealing with the above-mentioned situations, engendered by NLD's attempts to hold the said meetings, the Government exercised the utmost restraint and resorted to preventive measures with the objective of safeguarding peace and stability, placing the larger interest of the country and people before that of a particular party.

However in September 1997, the NLD acted in accordance with the law by seeking prior permission from the Government when it was planning to hold a meeting to commemorate the ninth anniversary of its founding. With the Government's permission, the ninth anniversary of NLD was held in the compound of Daw Aung San Suu Kyi on University Avenue on 27 September 1997, as scheduled. Again on 28 September 1997, the NLD continued the second-day meeting of its ninth anniversary. Both meetings were attended by local journalists and correspondents of foreign news agencies, and they were concluded without any incident.

In October 1997, NLD sought permission from the Government to hold a religious ceremony, which was again granted.

It is to be noted that all political parties are required by existing laws to seek prior permission before holding public meetings, and no political party can be exempted from this requirement. The Government had also permitted the

National Unity Party to hold its party meeting when it similarly sought prior permission.

The NLD leadership again attempted in late October 1997 to carry out youth organization activities in two townships in Yangon. Although the Government suggested that these activities should be organized at the residence of Daw Aung San Suu Kyi for reasons of her security and of peace and tranquillity, the NLD did not heed the suggestion of the Government and threatened to continue these activities.

Combating the drug menace

The Government of Myanmar has always been firmly committed to the eradication of narcotic drugs in Myanmar. It has been making sustained efforts under a well-conceived and coherent strategy to achieve this objective. At the national level, Myanmar's political commitment to eliminate the drug menace has been proved beyond any doubt by the sacrifice of lives and limbs by members of the armed forces in the military operations against the drug traffickers. In these operations from 1988 to August 1997, 776 members of the armed forces including 25 commissioned officers, sacrificed their lives, and 2,351 members, including 84 commissioned officers, sustained serious injuries. It would be difficult to imagine whether such sacrifices have ever been made elsewhere. With the objective to gradually eliminate poppy cultivation by promoting the standard of living of the national races, the Government spent 49,571 billion kyats on the development of border areas from 1989 to 31 May 1997. In the Government's efforts to reduce supply, the national leaders of the border areas are cooperating with the Government. As a measure of supply reduction since 1989, 11 destructions of narcotic drugs have been carried out in Yangon in the presence of foreign diplomats and journalists. The principal narcotic drugs destroyed up to the eleventh destruction are as follows: opium, 11,912.825 kg; heroin, 1,961.657 kg; marijuana, 4,246.505 kg; phensedyl, 26,525.574 litres.

Moreover, in the border areas, the destruction of narcotic drugs, drug refineries and poppy plantations has been carried out 18 times, in cooperation with the local populace and their ethnic leaders, who have in recent years returned to the legal fold. As a result, 36,682.03 acres of poppy plantations were destroyed. In respect of demand reduction, drug education was prescribed in the school curricula, and multiplier courses on the subject were conducted for headmasters and schoolteachers. These are important steps to prevent the culture of drug abuse from spreading to the vulnerable segments of the population.

Myanmar also recognizes that narcotic drugs transcend national borders and the threat can only be overcome with international solidarity. In this regard, Myanmar's cooperation with its regional neighbours is well known. Myanmar has been stepping up its cooperation with Thailand, the Lao People's Democratic Republic, China, India, Bangladesh, the Russian Federation, Viet Nam and the United Nations International Drug Control Programme. Although the United States Government suspended its assistance to Myanmar in 1988, Myanmar continues to cooperate with the Drug Enforcement Agency of the United States. Joint opium yield surveys conducted by the United States Opium Yield Survey Team with

Myanmar counterparts are a biennial feature of this cooperation. Three surveys have been carried out since 1993.

In its efforts to combat the menace of narcotic drugs, Myanmar has achieved a series of remarkable achievements, as follows:

(a) In early 1996, U Khun Sa and his Mong Tai Army (MTA), numbering tens of thousands, renounced drug trafficking and surrendered unconditionally, bringing with them a vast arsenal of assorted weapons. The development was a breakthrough in Myanmar's war on the drug menace;

(b) In April 1997, Myanmar declared Mongla Special Zone (4) in Kyaington in Eastern Shan State as a drug-free zone. The achievement was the ultimate result of a five-year plan which was implemented with the active participation and cooperation of resident nationals of the region;

(c) Special Zone (2) of the Eastern Shan State and Special Zone (1) and (2) in Kachin State have been designated for establishment of drug-free zones;

(d) In a spirit of cooperation, the Myanmar authorities handed over the drug-trafficker Mr. Li Yun Ching to the Thai Authority in May 1997.

The Myanmar Government will continue its efforts to eradicate the drug menace with full commitment.

Allegations of repression

The Government has taken responsibility for the personal security of Daw Aung San Suu Kyi at her own request. However, such security measures provided have been misinterpreted and turned into allegations of restrictions on her and the NLD. The following events, which are well publicized, prove that these allegations are biased or misinformed:

(a) On 4 January 1997, Daw Aung San Suu Kyi held a ceremony at her residence to mark the Independence Day of the Union of Myanmar and also held a press conference which about 500 people attended;

(b) On 3 February, Daw Aung San Suu Kyi held a press conference at her residence on University Avenue, attended by both local and foreign correspondents and some members of the embassies in Yangon;

(c) On 12 February, the NLD held a commemorative ceremony for the Union Day of Myanmar, without seeking permission from the authorities. The attendance at the ceremony was reportedly estimated at 900 people. Diplomats and foreign correspondents were present on the occasion;

(d) In March 1997, Daw Aung San Suu Kyi held press meetings, one at the residence of U Kyi Maung, Vice-Chairman of the NLD, and the other at the residence of a top party functionary of the NLD.

Furthermore, there were no restrictions whatsoever on Daw Aung San Suu Kyi in her contacts, be they social or otherwise, with the high-ranking officials of

certain embassies of the West in Yangon. And these contacts are common knowledge.

Except in circumstances where the Government was constrained to take preventive action with a view to maintaining public order, the Government was most tolerant. In fact, NLD is playing a destabilizing role in the politics of the country by resorting to a negative political campaign against the Government, without justification. In addition, it has urged foreign businesses not to invest in Myanmar, called for a boycott of "Visit Myanmar Year", and at every opportunity, slandered the Government. Despite all these, the Government has exercised utmost restraint in handling matters involving the NLD and its members. Such a degree of tolerance would have been inconceivable elsewhere.

Meeting with the Chairman of the NLD

On 17 July 1997, Lt. General Khin Nyunt, Secretary (1) of the State Law and Order Restoration Council (SLORC) cordially received Chairman of NLD U Aung Shwe and two Central Executive Committee members. This was the first meeting between the Government and the NLD since it unilaterally withdrew from the National Convention process in November 1995. It is a positive and conciliatory gesture on the part of the Government towards the NLD. On 15 September 1997, nearly two months after the first meeting, Secretary (1) extended an invitation to U Aung Shwe and two other Central Executive Committee members of NLD for an open discussion with the senior officials of the Government. Although the Chairman of the NLD and two CEC members had welcomed the invitation of the Government, the meeting scheduled for the next day, 16 September 1997, did not materialize. While Secretary (1) of the SLORC, together with the Chairman of the National Convention Convening Committee and Minister of Religious Affairs, the Chief Justice, the Attorney General and the Commander of Yangon Command, was expecting the arrival at the meeting of the NLD Chairman and two CEC members, it was intimated through a liaison officer that the Chairman of NLD had decided not to attend the scheduled meeting since "he was not at liberty" to keep the appointment with the governmental leaders. It was regrettable that the second meeting could not be held since personal interests seemed to have taken precedence over that of the party. As such, it has proven more and more difficult for the Government to continue its sincere efforts for further contacts with the NLD.

Myanmar's cooperation with the United Nations

Myanmar has consistently cooperated with the United Nations to the fullest extent possible. As its track record in this respect stands as proof, Myanmar made every effort to comply with the requests of the United Nations for its representatives to visit Myanmar. Myanmar had accepted the visits of Madame Ogata, the Independent Expert of the Commission on Human Rights and of Professor Yozo Yokota, the Special Rapporteur of the Commission. In 1996, the Government of Myanmar went an extra mile to cooperate with the United Nations when Foreign Minister U Ohn Gyaw came to New York solely for a round of discussions with Mr. Alvaro de Soto, the Assistant Secretary-General for Political Affairs. Again in June 1996, Myanmar promptly responded to a request of the United Nations for a meeting between Foreign Minister U Ohn Gyaw and Mr. Francesc Vendrell, the Director of East Asia and Pacific. The Myanmar side made special

efforts to enable Mr. Vendrell to meet Foreign Minister U Ohn Gyaw in Bangkok, while Foreign Minister U Ohn Gyaw was on his way to Malaysia on an official visit.

Early this year, the Government of Myanmar received the two visits to Myanmar of the representatives of the Secretary-General.

The first was the visit to Myanmar of Mr. Francesc Vendrell from 17 to 21 February 1997. During the visit, Mr. Vendrell held discussions with Foreign Minister U Ohn Gyaw and other high-ranking officials of the Government.

In May 1997, Mr. Alvaro de Soto paid a visit to Myanmar. That was the first visit of Mr. Alvaro de Soto in his capacity as the Special Envoy of the Secretary-General after Mr. Kofi Annan had assumed his high responsibilities as the new Secretary-General. While in Myanmar, Mr. de Soto met with Lt. General Khin Nyunt, Secretary (1) of the SLORC, Foreign Minister U Ohn Gyaw and other high officials of the Government from 7 to 10 May.

While in New York for the fifty-second session of the General Assembly, Foreign Minister U Ohn Gyaw held another round of discussions with Mr. de Soto at United Nations Headquarters on 1 October 1997.

Concerning the request for the Special Rapporteur appointed by the Commission on Human Rights, Judge Rajsoomer Lallah, to visit Myanmar, it must be underscored that the report of his predecessor on Myanmar disappointingly failed to reflect the true situation in Myanmar, although he had ample opportunity to see the positive developments in the country. Instead, the report only reproduced the litany of complaints that invariably emanated from dubious and politically motivated sources. As a result, the situation in Myanmar was unfairly and most negatively portrayed. This has given rise to some misgivings about the benefit to the country of a special rapporteur's visit at this juncture. However, Myanmar does not preclude the possibility of such a visit by Mr. Lallah at a time which the Myanmar Government deems appropriate.

Conclusion

It is the present Government that is laying the foundation for the establishment of multi-party democracy. Until such a time when a fully-functioning democracy has been established, any criticisms against the present Government are tantamount to prejudging the outcome of the Government's efforts for the establishment of a multi-party democratic system. At this juncture, the unrestrained criticisms and diatribes against the Myanmar Government are unjustified, untimely and counter-productive. Myanmar's current problems stem from the divisions among the national races bequeathed to Myanmar by its colonial past. Therefore, fundamental to all these problems is the question of national unity. Without being able to solve this basic question in a manner acceptable to all the national races, other peripheral issues will remain as difficult as ever. For these reasons, the Government is concentrating first and foremost on the strengthening of national unity, with twin processes. While the National Convention process is making efforts to enshrine the interests of all the national races in the new constitution, the reconciliation process with the armed groups is almost complete but is continuing in tandem. Both processes are

moving in the right direction, gaining momentum, despite the attempts of extraneous forces to disrupt them.

The transition of the Union of Myanmar towards a multi-party democracy will be enhanced if the above-mentioned extraneous forces will resort to less criticism and political negativism and begin an era of constructive engagement and cooperation.

Under these circumstances, only a fair consideration of the situation in Myanmar on the basis of a clear understanding of the current problems in their true historical perspectives will serve the purpose. An unbalanced and intrusive resolution on Myanmar which lacks such an understanding will only be counter-productive.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Letter dated 11 November 1997 from the Permanent Representative of Peru to the United Nations addressed to the Secretary-General

I have the honour to inform you that, in accordance with Act. No. 26671 adopted by the Congress of the Republic of Peru, the Executive Committee of the judiciary of Peru issued Administrative Decision No. 5190-CME-PJ dated 28 October 1997, which stipulates that as from 15 October of the current year the Permanent Criminal Chamber of the Supreme Court of Justice of Peru shall be the body responsible for conducting, supervising and monitoring legal proceedings in cases involving acts of terrorism, as provided for in Decree Law No. 25475.

As a result, the so-called "faceless courts", in which the judges' identities were hidden, created as an emergency measure in response to the violent situation in the country, have been dissolved. Consequently, the fundamental procedural rules in force shall be applied in legal proceedings involving terrorism.

I should be grateful if you would have this letter circulated as a document of the General Assembly under agenda item 112 (b).

(Signed) Fernando Guillén SALAS
Ambassador
Permanent Representative

97-31887 (E) 141197 141197

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 14 November 1997 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you herewith the official response of the Government of the Republic of Iraq to the interim report on the situation of human rights in Iraq submitted by the Special Rapporteur of the Commission on Human Rights to the General Assembly at its fifty-second session (A/52/476).

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly under agenda item 112 (c).

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

97-32200 (E) 241197 251197

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ANNEX

Response of the Government of Iraq to the interim report on the situation of human rights in Iraq submitted by the Special Rapporteur of the Commission on Human Rights to the General Assembly at its fifty-second session (A/52/476)

It is perhaps axiomatic that human rights cannot be discussed in isolation from the political climate, economic and social conditions and considerations of time and place. They cannot be considered in the same frame of mind and with the same objectivity in time of war as in time of peace. Moreover, cultural and religious considerations have a role to play in this connection.

In regard to such instrumentalities of the United Nations as the work of the special rapporteurs on human rights who concern themselves with situations in particular countries, it is a familiar concept that they have the goal of improving and strengthening human rights in the country concerned in accordance with the guidelines laid down by the United Nations and particularly those endorsed by the General Assembly in a whole series of resolutions. In its resolution 51/105 of 12 December 1996, for example, the Assembly reaffirms that the promotion of all human rights should be guided by the principles of non-selectivity, impartiality and objectivity and reiterates that, by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status. Regrettably, however, we find a deliberate affront to these principles and a failure to comply with them on the part of this Special Rapporteur, who has used the mandate assigned to him to pillory the Government of Iraq. Not only has he done this, but he has also used his mandate to provide himself with a rostrum from which to call for a change of political system in Iraq. He thus claims that it is only possible to bring about a change in the human rights situation in Iraq by bringing about a radical change in the political and legal system in Iraq, and this constitutes a flagrant violation of the right of the people of Iraq to self-determination as laid down in common article 1 of the International Covenants on Human Rights. Thence it is clear that van der Stoel has departed from his ostensible tasks and has become a vehicle for the achievement of political objectives that are incompatible with the peremptory norms of human rights as exemplified by the right of peoples freely to choose their political system without external interference.

Such a perversion of a special rapporteur's functions explains all of van der Stoel's practices, involving as they do prior condemnation and the abandonment of objectivity and impartiality in the collection, dissemination and analysis of information. He has adopted a biased approach to addressing the human rights situation in Iraq, not with a view to improving it and cooperating with the country concerned to that end but of advocating the replacement of the legitimate regime in Iraq at the urging of certain parties seeking to achieve political objectives that serve the interests of well-known States.

In paragraph 2 of his report, van der Stoel calls, inter alia, for the abrogation of Revolution Command Council Decree 840 of 1986 on the grounds that

it constitutes a violation of freedom of opinion and penalizes free expression. In this connection, the Government of the Republic of Iraq feels obliged to clear up an important legal issue relating to the allegations that this decree prescribes the death penalty for criticism of the President of the Republic. Such a claim either involves legal sophistry or a lack of precision in interpreting the decree, which is based on an amendment to paragraph 1 of article 225 of the Penal Code.

The decree provides for a penalty of life imprisonment for insulting the President of the Republic in a public manner. Accordingly, it is a precondition of the application of such a sentence that the perpetrator should insult the President of the Republic, and not merely criticize him as these allegations normally state. In criminal law, the difference in meaning between criticism and insult is great. Moreover, the application of such a sentence also requires that the perpetrator should offer the insult in a public manner, namely in one of the ways set forth in paragraph 3 of article 19 of the Penal Code. These involve the commission of a crime in a public thoroughfare, in a public forum, by means of a mechanical device or through the media of dissemination.

The decree then provides for the death penalty for the said act, subject to the conditions mentioned, where it is committed with intent to arouse public opinion against authority. In such an event, the offence assumes a different criminal character and is regarded as a crime that is prejudicial to internal State security. This is because its goal is not merely to offer insult and because it has the ultimate intent of arousing public opinion against authority by inciting the overthrow of the system of government or fomenting conflict between sects or religions. The moral basis on which the Penal Code relies in thus penalizing insult to the President of the Republic is also used by article 227 of the Code when it provides for the punishment by imprisonment of whoever commits the offence of insulting the head of State of any country in the world or the head of any international organization and of whoever commits the offence of insulting the flag or emblem of such a country or international organization.

In paragraph 5 of the report, the Special Rapporteur alleges an absence of cooperation on the part of the Government of Iraq and states that he has received information from other, non-Iraqi, governmental and non-governmental sources. He thus explicitly acknowledges that he is choosing to ignore the official responses that the Government of Iraq has made a point of submitting to all of his reports, whether to the Commission on Human Rights or the United Nations General Assembly, since 1992. There is also, moreover, the cooperation the Government of Iraq has extended to the special rapporteurs on various specific topics. We have to question, in this connection, the credibility of the information van der Stoel obtains from these non-Iraqi sources and whether it is possible to regard it as official, documented information on Iraq that can be relied on and given currency.

The allegations made in paragraphs 6 and 7 of the report concerning the situation in northern Iraq and the issue of the missing Kuwaitis are the same as those made in the Special Rapporteur's previous report, and Iraq responded to them in sufficient detail in the report it submitted to the United Nations General Assembly at its fifty-second session in 1997.

With the accusation made in paragraphs 8 and 9 that the leadership of Iraq is continuing to violate human rights, van der Stoel removes all doubt that he proceeds on the basis of a predetermined attitude of hostility towards the national regime in Iraq. He is thereby placing himself at the service of a transparent conspiracy led by the United States of America to overthrow that regime and impose particular political choices on the people of Iraq. This confirms his complete abandonment of the terms of his mandate and the fact that he is interfering in the internal affairs of an independent, sovereign country that is a Member of the United Nations.

His allegation with regard to the legal system and the charge that the exercise of legislative, executive and judicial powers is not in conformity with the international instruments are absolutely unacceptable and constitute blatant interference in purely internal affairs and the framing of charges in a random and biased manner. An objective and more than cursory reading of the Constitution of Iraq would show that it prescribes the operation of the institutions in question meticulously. The laws in effect pursuant to the Constitution then regulate them in such a way as to ensure that they are independent of each other and perform their functions in a uniform manner. In this regard, reference may be made to the responses of Iraq as contained in documents A/49/394, A/50/471 and A/C.3/51/3.

The repeated allegations that there are Iraqi military concentrations in areas adjacent to the northern governorates are a desperate attempt to distract attention from the true state of affairs in this area, that is to say from the bloody conflicts being waged by the warring Kurdish factions among themselves that occur as a result of the continuing foreign intervention in the area. There are also the repeated Turkish incursions that have been taking place since 1991 and are still continuing, as well as the artillery and aerial bombardments of civilian areas of northern Iraq that accompany them and cause casualties among innocent civilians and damage to property. In October 1997 Turkish aircraft bombarded two hills in the Shaqlawah area in northern Irbil Governorate for one full hour using internationally prohibited napalm and cluster bombs. The Turkish Government has also established a security zone inside Iraqi territory in violation of Iraq's sovereignty and independence, and this has been condemned and censured by most of the world's countries. Van der Stoel, however, seeks to ignore an anomalous and abnormal situation that threatens the security and stability of the entire region and of Iraq in particular, and he does not manage to make even a passing reference to it. Instead, he proceeds to focus his efforts on giving currency to the false allegation that Iraq has concentrated its forces inside its own territory in northern Iraq. Even if this were true, it would be quite normal. Iraq has the legitimate right, after all, to deploy its forces inside its own territory and within its international boundaries.

The allegations made in paragraphs 12 to 15 and in paragraph 18 that individuals and families from the villages of Umm al-Ghizlan, Bani Sa'id and Dawayah were arrested, executed and tortured in April 1997 are untrue and absolutely groundless. No precise information is given whose truth can be established, and none of these incidents ever happened, either in these areas or elsewhere. The true state of affairs with respect to what is happening is that the authorities concerned are engaged in legal investigations of certain persons

accused or convicted of committing criminal offenses such as murder, armed robbery and highway robbery in the areas in question. It is normal that the State should carry out its functions and fulfil its obligation to its citizens to protect their security, safety and property.

In paragraph 16 of the report, van der Stoel alleges that there was an attempted coup d'état and that a number of persons alleged to have been involved in it were executed. We can affirm that there was no such incident and that what van der Stoel reports is a mere fabrication and a figment of his imagination.

In the section of the report on freedom of opinion and expression (paragraphs 22 and 23), van der Stoel repeats the statements made in his previous report. In this connection, the Government of Iraq has nothing to add to what it said on this subject in its last detailed response.

The allegation made in paragraph 19 concerning the detention and torture of 25 families in the village of Al-Fajr is untrue and absolutely groundless. The Governor in question issued no such orders for the arrest or detention of any family as are alleged by van der Stoel.

Paragraphs 24 to 33, in the section headed "Forced displacement", contain distortions of the facts and blatant and deliberate falsifications. In reality, the population displacements in the Dohuk, Irbil and Sulaymaniyah governorates took place, just as they are continuing to take place, because of the fighting for control of territory that breaks out from time to time among the warring Kurdish factions in the area of Iraqi Kurdistan. The most recent incidents of fighting among these groups are those that began in October and November 1997 and are still going on, and there are also the military assaults being launched by Turkey from time to time. This anomalous situation has been an inevitable result of foreign interference in the area, particularly that of the United States and the United Kingdom, and of the protection and support provided to these warring factions after the Government of the Republic of Iraq was obliged to withdraw its civil and military administration from the area in 1991.

In a number of its previous responses the Government of Iraq explained in minute detail the true nature of the situation in this area and called attention to the constant interference by the United States in order to impede or halt any attempt at a national dialogue between the Government of Iraq and the Kurdish groups with a view to resolving a situation in which innocent civilian citizens are the victims. To hold the Government of Iraq responsible for the displacement of citizens in these areas is therefore absolutely unacceptable, given that this is something that is beyond the control of the central Government.

Van der Stoel alleges that the Government of Iraq is making demographic changes in the area of Kirkuk and Khanaqin. We should like to stress that there have been no compulsory resettlements carried out by expelling Kurds and Turkomans from the cities of Kirkuk and Khanaqin. The truth of the matter is that during the Iraq-Iran war a number of families were resettled because they were living in border areas that became a theatre of military operations at that time. It thus became necessary to relocate civilian inhabitants from the

border-strip regions as a precaution and in order to ensure their safety, and they were compensated for their property in accordance with the law. We should like in this connection to refer to Iraq's response contained in document A/49/394.

The allegations concerning the confiscation of extensive areas of agricultural land in the same governorate are absolutely groundless. There was no confiscation of any agricultural land in that governorate.

In paragraphs 37 and 38 of the report, in the section headed "The rights to food and health care", the Special Rapporteur expatiates on the nutritional situation in Iraq and cites figures published by international organizations such as the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO). We should like in this connection to state that the most recent official figures indicate that between January and September 1997 the total number of childhood deaths caused by the blanket economic embargo imposed on Iraq was 890,628 and that the causes were such conditions as malnutrition, diarrhoea, heart disease, malignant neoplasia, kidney disease and diabetes. The infant mortality rate has reached 93 per 1,000 live births.

In paragraphs 39 to 42, the Special Rapporteur expresses satisfaction with the manner in which the memorandum of understanding between Iraq and the United Nations Secretariat is being implemented and with the facilities provided by the Government of Iraq in this respect. Then, in paragraph 43, he again reverts to expressing concern that the geographical observers working in Iraq in accordance with the memorandum of understanding are not based permanently throughout the country with free access to any location without prior notification so as to enhance the credibility of the information gathered. In this connection, the Government of Iraq rejects outright any interference by the Special Rapporteur in the food distribution mechanism and the plan approved under the memorandum of understanding, which is beyond the scope of his mandate. In the first place, he has no right to amend the memorandum and, in the second place, there is a full complement of specialist staff at the United Nations that is currently engaged in implementing the memorandum in cooperation with the Government of Iraq. Iraq would like to point out that the memorandum of understanding is an exceptional and temporary measure, as stated in document S/1996/356 itself, and that it was concluded in order to mitigate the suffering of the Iraqi people caused by the blanket embargo imposed on it in 1990. It is not possible, under any circumstances, to consider it as a substitute for the implementation of paragraph 22 of section C of resolution 687 (1990). Accordingly, it is neither logical nor reasonable for geographical observers monitoring the implementation of the memorandum of understanding, which is temporary in nature, to be deployed on a permanent basis.

The question of granting complete freedom of movement to the geographical observers, dealt with in paragraphs 43, 44 and 45 of the report, should not have been mentioned at all. In paragraphs 39 and 40 of his report of 2 June 1997 pursuant to paragraph 11 of resolution 986 (1995) (S/1997/419), the Secretary-General of the United Nations states that the Government of Iraq has cooperated fully in according United Nations personnel the requisite freedom of movement and in permitting unrestricted travel throughout the country, satisfactory

access to important information and contact with officials in warehouses and mills and with distribution agents as well as in providing other facilities.

The conclusions reached and the spurious and biased information purveyed by van der Stoel in paragraphs 44 and 45 are absolutely groundless, and no such complaints have been made to the Iraqi authorities. Far from this being the case, in his aforesaid report the Secretary-General of the United Nations commends the efforts made by the Government of Iraq and the cooperation it has extended.

The Government of the Republic of Iraq would like to make some observations on the conduct of the geographical observers. The functions assigned to them in implementing the memorandum of understanding are confined to verifying and reporting the fairness of the distribution of the goods imported in accordance with the memorandum and to monitoring the storage of goods, whether foodstuffs, medicines or other humanitarian items. Many of the observers, however, often overstep their functions and interfere in the private affairs of citizens by asking them questions that bear no relation to the tasks assigned to them. A head of household may be asked, for example, whether the house in which the family lives is owned or rented. Sometimes questions are asked about the educational attainment of members of the household, years of service with State agencies, salaries and working hours, the water and electricity situation and the cause of death of the head of household and whether he died on active military service or of natural causes. One observer (an Italian national) went so far as to request approval from the Ministry of Foreign Affairs to adopt an Iraqi family on the grounds that it was poor. This is to be regarded as interference not only in the affairs of that family but also in the relationship between the Government of Iraq and its citizens. At the same time, some observers violate the laws and regulations by renting private houses and failing to stay in the hotels designated for the accommodation of officials working under the memorandum of understanding. Most such practices of the geographical observers have been reported orally or in writing to the Office of the United Nations Coordinator.

With regard to the allegations made in paragraphs 46 and 47 concerning the problematic nature of the ration-card system, we should like to reaffirm that this subject is of no concern to the Special Rapporteur and is an attempt on his part to intrude himself into matters that fall outside the scope of his mandate in order to interfere in the internal affairs of Iraq and, indeed, in the work of another United Nations body. Van der Stoel's pronouncements involve a great deal of exaggeration and imprecision, and the working procedures followed by the Government of Iraq have the goal of preventing multiple registration and manipulation. The allegation that there are thousands of people who have been refused ration cards is groundless, and not a single case has been recorded where the right to register has been denied to any citizen. The geographical observers have mentioned no such allegations in the reports they submit in the light of their unrestricted field visits. The Government of Iraq has, on the contrary, been meticulous in ensuring that all citizens should obtain their allotted rations without distinction or discrimination of any kind. This also applies to Iraqi citizens in the northern, central and southern regions, including the marshland region.

In paragraphs 52 to 54 of his report, van der Stoel sets forth in detail the merits of the memorandum of understanding and what it provides to citizens in terms of calories. He seeks to ignore, however, the fact that people need not only calories but also medication, health care and electric power. Had he been fair and had he been committed to the human rights of the Iraqi people, he could have mentioned the fact that, on the grounds that they could be dual-use items, the Security Council Committee established by resolution 661 (1990) had rejected contracts for the supply of ambulances to the Iraqi Ministry of Health and for truck tyres to improve the operation of the trucks that carry the goods imported under the memorandum of understanding. The Committee has rejected many contracts relating to the electricity sector. We should like, in this connection, to state that, prior to 1990, the Government of Iraq had allocated 360 million dollars a year to the maintenance of electric power stations. The amount under the memorandum of understanding is only 10 per cent of that figure, namely 36 million dollars, and of this meagre sum only 5 per cent has been spent.

In urging, in paragraph 61, the deployment of human rights monitors in Iraq in the same manner as the geographical observers operating in the framework of the memorandum of understanding, the Special Rapporteur is guilty of conflating two different things in an unacceptable manner. The function of the United Nations geographical observers is defined in the memorandum of understanding, whereas the underlying purpose of assigning human rights monitors is well known and infringes on the security, sovereignty and independence of Iraq. The Government of Iraq stated its position of rejecting this proposal outright in document A/C.3/47/2.

From an examination of the report, it is clear beyond any doubt that the Special Rapporteur has had no regard for the true nature of human rights as a subject. One of the most elementary rules for any study of such subjects is that it should avoid politicization, denigration and abuse of the mandate assigned to the international personage supposedly selected with care with a view to ensuring the achievement of the goals desired from the tasks assigned. From our experience with him since 1992, we can say that van der Stoel insists on interfering in the internal affairs of Iraq and in attempting to impose particular political choices on its people that serve the schemes of the United States. This has caused him completely to abandon the objective of his task, which is to promote human rights in Iraq.

The judgements made and the proposals formulated in all of his reports, the most recent being that under consideration, indicate conclusively that he completely ignores the objectively exceptional circumstances created by the 30-Power aggression against Iraq in 1991 and the blanket embargo imposed on it in August 1990 as well as the adverse impact they have had on all human rights in Iraq without exception. This did draw the attention of the Subcommission on Prevention of Discrimination and Protection of Minorities, and, in its decision entitled "The humanitarian situation in Iraq" and its resolution entitled "The adverse impact of economic sanctions on the enjoyment of human rights", it stressed that such measures should be of limited duration. None of this, however, has captured the attention of the Special Rapporteur and he has, on the contrary, been motivated to persist in demanding a change of political system in

Iraq. This reveals the intentions and motives of his tendentious campaign against Iraq as part of the conspiratorial scheme against it.

The core of the problem resides in the fact that all human rights have been diminished because of the maintenance of the blanket embargo imposed on Iraq. If the Special Rapporteur had a minimum of fairness, objectivity and concern, he would have demanded that the embargo be lifted, because that is the only way to ensure that the Iraqi people can enjoy all of its rights. No two people can disagree that giving effect to human rights and their effective strengthening are closely linked with improving the economic situation in general.

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ADVANCEMENT OF WOMEN

Letter dated 12 November 1997 from the Permanent Representative of the Dominican Republic to the United Nations addressed to the Secretary-General

I have the honour, on behalf of the Dominican Republic and on my own behalf, to request you to arrange for the circulation of this communication. In this communication we call on all Member States to devote particular attention to the observance of the international day for the elimination of violence against women on 25 November.

It is most important that at a time when, despite the introduction of the observance of this international day, women continue to be the victims of domestic violence, social violence and the violence generated by the still numerous armed conflicts around the world the United Nations should place its incomparable seal on this significant commemoration.

The Dominican Republic and I, myself, as the Dominican Republic's Permanent Representative to the United Nations, which is so ably led by you, attach great importance to the introduction of the observance of the international day for the elimination of violence against women owing to the significance in Dominican history of the assassination of the Mirabal sisters, who, as Mariposa resistance fighters, opposed the regime of Trujillo, the tyrant who oppressed our country for over 30 years. The Mirabal sisters were vilely assassinated, together with Rufino de la Cruz, their driver, on 25 November 1950. This assassination provided yet further proof of the unlimited capacity of women to contribute to the struggle for freedom and peace, even going as far as making the supreme sacrifice.

We therefore urge all Member States to accord to the commemoration of this international day the same priority as that accorded to the observance of International Women's Day on 8 March every year, and that it should be

recalled that this was the contribution made by Dominican women to the advancement of the status of women around the world.

(Signed) Cristina AGUIAR
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the Dominican Republic
to the United Nations